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THE
Madras General Sales Tax Act

ACT IX OF 1939

as Amended by Act XXV of 1947 and Act XVI of 1948

(With Rules, Forms and Notifications)

AND

**a valuable introduction, critical, analytical
and exhaustive commentaries, an index,
analytical tables and useful appendices**

SECOND EDITION

*(Revised, rewritten, enlarged, brought up to date
and designed for use throughout India)*

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PREFACE TO THE SECOND EDITION

I owe a word of explanation for the extraordinary delay in the appearance of this edition. Despite requests from the Public, by reason of controls, revision of the book had to be postponed till after the War. After the War, in view of the projected drastic amendments of the Act, largely on the lines suggested by me (*See Index under heading "Author, suggestions of"*), a really useful revision of commentaries had to await revision of the text of the Act by the Ministry. Even after Act XXV of 1947 came into operation, consequent on the removal of controls, changes were made in regard to the taxation of mill yarn by Act XVI of 1948. From November 1948, the Act was extended to the "merged areas" (Pudukotta and Banganapalle). Very many changes have been made in the Rules and Notifications during the last few months. All these changes are taken note of in this edition. All amendments to the Act, Rules and Notifications and all relevant High Court decisions up to the end of December 1948 are incorporated in this edition. I can assure the Public that the delay in the publication of this edition has been fully availed of to make the publication extremely useful.

A few words about the plan of the present publication are needed. At the instance of my friends in the Bar and in the Tax Department, and various businessmen who consulted me, I have had to look up, investigate and offer solutions for some of the problems in the actual working of the Act and these have been taken note of in the publication. Practically the entire matter has been rewritten in the light of the actual working of the Act, and my fairly wide experience as Public Prosecutor and as practitioner both before Courts and Tribunals under the Act.

The aim of drawing freely from the opinions of Hon'ble Judges and utilising in full the case-law under analogous enactments has been kept up. In view of the drastic nature of the Amending Act, under each section a note is added setting forth the effect of the Amending Act and, in the course of the commentaries, the departure made by the Amending Act from the pre-existing law is exhaustively discussed. The sections before and after the Amending Act are set forth

in parallel columns. The *Introduction* contains “a *Note on Transitional Law*”, which would be found to be useful. A new feature of this publication is the incorporation of a number of tables in the *Introduction* and in the course of the commentaries to facilitate an easy understanding of the law. My aim has been to dispel the common fallacy that, in the present enactment, unlike even in the Income-tax Act, taxation is arbitrary, unfettered by principles. I have unravelled in the commentaries to Section 9, the basic principles which must guide the taxing authorities exercising powers under this Act. Under the heading “*An Analytical Study of the Taxation Law*”, the entire law on the subject as also relevant matter covered by General Law is presented in a clear, cogent and easily assimilable form. The statement of the Taxation Law with reference to the various classes of goods has been brought under certain definite systems. A novel feature of this analytical study is the enumeration of the powers and duties with reference to assessing authorities, dealers and licensees. The “*Introduction*” has been rewritten and it condenses, in a comparatively short space, much useful and interesting matter. I have not shrunk from the task of offering my opinions on the legality of some of the provisions and on problems that may confront the authorities in the actual working of the Act. A further new feature of the present edition is that the law, as set forth in the rules, etc., is integrated to commentaries under the sections so that under each section, the commentaries present a panoramic view of the law covered by the Section.

The Madras Act has been adapted in many Indian Provinces and States with some modifications. I feel that the major portion of the commentaries has relevance not only to our Provincial Act, but to the Sales Tax Acts in force in the Indian Provinces, States and even Pakistan. For instance, one may refer to comments under *Dealer* [Sec. 2(b) and 14-A], *Sale* [Sec. 2(h)], *Turnover* [Sec. 2(i)], *Contractor* [Sec. 2(ii)], *Luxury Taxes* [Sec. 3(2)] *Escapement, Reassessment and Relevy* [G.S.T.R. 17 and 18], *Commission Agents* (Sec. 8), *Principles and procedure in assessment* (Sec. 9), *Offences, penalties and composition* (Ss. 15 and 16), *Actions in courts and limitation* (Ss. 17 and 18), *Working of one-pointed and multi-pointed tax systems* (*Introduction*), etc. To enhance the usefulness of this book and guide the reader by serving

as a key, I have added in the Appendix "*A comparative Table of Important Sections of Sales Tax Acts in India*," and a chapter entitled "*A Bird's-eye View of Sales Tax Acts in India and Pakistan*".

I have also set forth in the Appendix model Appeal and Revision forms and relevant provisions of the Contract Act and the Sale of Goods Act.

I desire to reiterate that no pains have been spared to make the publication useful to lawyers, officers administering the Act, Judges, businessmen and students of the tax law.

We cannot adequately express our gratitude to our Finance Minister, for piloting this Amending Act with considerateness for the interests of the mercantile class, without in the least affecting the demands of the Public Exchequer. If we owe the discovery of this "veritable mine" (Madras Act IX of 1939), to our subtle Statesman, our first matchless Premier and our first Governor-General of Free India, His Excellency Sri C. Rajagopalachari, it has been left to our brilliant financial Wizard, Hon'ble Mr. B. Gopala Reddi, to broaden the basis of this tax (by Act XXV of 1947) and thereby make it possible, out of the yield from this tax to finance total provincewide Prohibition in Madras.

Among Provincial administrations, Madras has stolen a march over the rest in the speedy execution of the programme of total Prohibition, thanks to the zeal of our *legislators*, the *devotion of our Ministers* and the able leadership of our Saintly Premier, Hon'ble Mr. Omandur P. Ramasamy Reddiar.

A word about the dedication. When the *MSS.* was being sent to the Press, a great calamity overwhelmed us in the loss of the Father of the Nation. But when the book was in the final stages of printing, the nation was celebrating *Gandhi Jayanti*. It struck me that this exposition of a scheme of taxation which, being designed to replace Excise revenue, and thereby shift the tax burden from the shoulders of the few poor addicts to drink, to the shoulders of the multitudinous consumer class, in order to finance Prohibition, must be dedicated to the memory of the Noble Soul whose life itself was a dedication to the cause of the weak and the down-trodden.

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9. INDEX

* Headings inserted by Author.

LIST OF ABBREVIATIONS USED IN THE BOOK

G. S. T. R.	..	General Sales Tax Rules.
T. R.	..	General Sales Tax (Turnover and Assessment) Rules.
G. S. T.	..	General Sales Tax Act.
A. C. T. O.	..	Assistant Commercial Tax Officer.
Dy. C. T. O.	..	Deputy Commercial Tax Officer.
C. T. O.	..	Commercial Tax Officer.
A. I. R.	..	All-India Reporter.
M. L. J.	..	Madras Law Journal.
N.	..	Notification.
F. N.	..	Foot-note.

Table showing the relation of Act, Rules, Forms and Notifications

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2.	1 (3) <i>coming into force.</i> N. I.
3.	2 (a-1) <i>assessing authority.</i> N. II.
4.	2 (h) <i>Other valuable consideration.</i> T. R. 17.
5.	(New) 2 (i) <i>explanation</i> (i) & 2 (ii) <i>turnover in Works Contract.</i>	T. R. 4 (3) (New)
6.	2 (i) <i>Explanation</i> , (iii) <i>cash or other discount.</i>	.. T. R. 5 (1) (a).
7.	2 (i) <i>Explanation</i> , (iii) <i>Amount refunded.</i>	.. T. R. 5 (1) (b).
8.	2 (i) <i>Explanation</i> 1, (iv) <i>accommodation dealer.</i>	.. T. R. 5 (1) (c).
9.	3 (1) <i>rate of tax.</i>	.. T. R. 4 and 5 on net turnover.
10.	(New) 3 (2) <i>Luxury tax.</i>	.. T. R. 4 (B). G. S. T. R. 12.
11.	3 (3) <i>Exemption for less than Rs. 10,000.</i>	.. T. R. 5 (3).
12.	3 (4) <i>Determination of turnover.</i>	.. T. R. 4 (i) (A) 4 (B), 5.
13.	3 (5) & (6) <i>Assess, levy, collect, instalments and turnover of previous year.</i>	.. T. R. 6 to 17.
14.	3 (5) <i>proviso</i> <i>'only one of them.' (seller or buyer.)</i>	.. { T. R. 4 (1) <i>Seller's scheme.</i> T. R. 4 (2) <i>Buyer's scheme.</i>
15.	4 <i>exclusion from operation.</i>	.. T. R. 4 (1) (d). G. S. T. R. 12

Table showing the relation of Act, Rules, Forms, etc.—*contd.*

SECTION OF ACT AND POINT.	RULE OR NOTIFICATION
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17. 5 (ii) non-handspun cotton yarn.	{ T. R. 4 (A) (i). T. R. 5 (1) (e). G.S.T.R. 5 to 8 and 12 Forms I, III, VII.
18. 5 (iii) non-handspun handloom cloth.	{ T. R. 5 (1) (e). G.S.T.R. 5 to 8 and 12. Forms I, III, VII.
19. 5 (iv) Bullion and specie.	{ T. R. 4 (A) (ii). T. R. 5 (1) (e). G.S.T.R. 5 to 8 and 12. Forms I, II, VII.
20. 5 (vi) Hides and skins.	{ T. R. 4 (2) (c) (d). T. R. 5 (1) (e). T. R. 16. G.S.T.R. 5 to 8 and 12. Forms I, IV A4, A-5.
21. (New) 6 Governmental Notifications.	{ G.S.T.R. 6 (12) (New). N. IV.
22. 7 Rebate.	{ G.S.T.R. 9 to 10. Form. VIII N. V. VI.
23. Licensed Agents	{ T. R. 5 (1) (f). G. S. T. R. 6 to 8 and 12. Forms V, VI, X, XI.
24. (New) 8A Registration.	{ T. R. 5-A (1) to (7). N. II proviso (iii). Forms A-6, A-7, A-8.
25. (New) 8B Collection and payment of by registered dealers.	{ T. R. 5-A (8) and (9). Form B-2.
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28. 9 (2) Assess.	{ T. R. 7, 8, 11, 13, General. T. R. 15 & 16. Hides and skins.
29. 9 (2) Assess to best of judgment.	{ T. R. 8, 11 (3); 13 (4) General. T. R. 15 & 16 Hides and skins.
30. 9 (2) Opportunity of proving correctness and completeness.	{ T. R. 9, 11 (3), 13 (4) General. T. R. 15 (4) Hides and skins.

Table showing the relation of Act, Rules, Forms, etc.—(cont).

	SECTION OF ACT AND POINT.	RULE OR NOTIFICATION.
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35.	12 (1) <i>Orders in Revision.</i>	.. G. S. T. R. 14-A, 15, 16.
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42.	19 (c) <i>Change of ownership.</i>	.. G. S. T. R. 19 and 20.
43.	19 (d) <i>Minors and incapacitated persons.</i>	.. G. S. T. R. 22.
44.	19 (e) <i>Estate under Court of Wards, Admi- nistrator-General, etc.</i>	.. G. S. T. R. 23.
45.	19 (f) <i>Escapement.</i>	.. G. S. T. R. 17.
46.	19 (g) <i>Rectification.</i>	.. G. S. T. R. 18.
47.	19 (h) <i>Compelling submission of production of documents, etc.</i>	{ G. S. T. R. 24 to 28. Form IX.
48.	19 (i) <i>Keeping matters confidential.</i>	.. G. S. T. R. 30.
49.	19 (j) <i>Duties and powers of officers.</i>	{ N. II. See also under Sec. 14.
50.	19 (k) <i>Regulating procedure Forms, etc.</i>	{ G. S. T. R. 6 and T. R. 6 to 16 Form, I to XI and A to C
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INTRODUCTION

ORIGIN OF THE TAX

"The General Sales Tax introduced in Rome by Augustus, the Sales Tax in the Kingdom of Naples in the fifteenth century, and the Spanish *alcavala* (a general sales tax of the middle ages), went their unsatisfactory way and left their little trace"¹. The modern sales taxes which have, since the war, proved to be a successful fiscal expedient, bear no relation to the sales taxes of earlier days. But, records of taxes imposed in "England by Pitt during the wars with France at the end of the 18th century, and those imposed in the United States at the time of the Civil War give the only true historical background for the modern sales taxes"². The first country to introduce in some form the modern sales taxes was Germany. France, Belgium, Canada and Italy quickly followed, and, in the present day, the tax is in operation in "twenty-five States of the United States of America, three Dominions of the British Commonwealth, twelve countries of Europe, and six Republics of South America."³ Even in the United Kingdom, as a measure intended to increase revenue for purposes of War, Purchase Tax was introduced in 1940. In some of the countries in Asia the levy of this tax was only temporary.

FEATURES OF THE SALES TAX IN VARIOUS COUNTRIES

The German "Turnover Tax" and to a great extent the "Sales Tax" levied in Czechoslovakia "are examples of taxes which included every type of transaction in the line of goods and services". But the French tax applied to industrial and commercial transactions and excluded agriculturists and members of the liberal professions and employees. While the Sales Tax levied in Belgium and in Canada was on wholesalers and manufacturers, the States of the American Union confined the tax to retail transactions. In the case of the United States of America the tax is of a *provincial* nature though exemption is granted in the case of trade between States. The tax is in the generality of cases a national tax. In Australia, however, it is a Federal tax. In all countries, exemptions from taxation have been granted. In pre-war Germany, certain foodstuffs, raw materials and other imported necessities were exempt. In France, not only sales of bread and certain special commodities were exempt, but agriculturists, members of the liberal professions and employees were exempt from taxation. In Belgium, exports were exempt from tax as also some kinds of imports. Sales of bread, flour, potatoes, water, gas, electricity, farm products, coal and other specified products were also

1. Comstock "Taxation in the Modern State" p. 113.

2. *Ibid* p. 113.

3. Premier's speech in the Legislative Assembly on 8th May, 1939. (*Legislative Assembly debates*, Vol. XII, No. 8 at p. 469).

exempt in Belgium. In Poland, welfare agencies, export organisations as also agricultural operations were excluded. While in some countries like France, the tax is confined to cities, in several countries the tax is levied both on urban and on rural population as well. The rate of tax has varied considerably. In pre-war Germany the tax was as low as .5% in 1918, and it mounted to 2.5% in 1928. In 1928 the rate of tax in France was 1.1% while in Belgium and in Czechoslovakia it was 1%. The rate varied from 1% to 5% with reference to the nature of articles and transactions in Poland. In Czechoslovakia and some other countries, the general sales tax was accompanied by a luxury tax of about 15% on certain articles classed as luxuries. The rates of purchase tax in England vary with reference to classes of goods from 40% to 200%. In India itself, there is an old and well-established custom known as *mahimai* on the part of businessmen to put by three pies per rupee of turnover for charitable purposes, and this Act is only an extension of this practice for State purposes.

SALES TAX AND INCOME-TAX

In the modern system of taxation the 'Sales Tax' sometimes called also the 'consumer's tax' is next in importance only to the income-tax. Taking the figures for the year 1936, while the Sales Tax in France approximated in yield to the income-tax in point of return, in Germany, the yield from the Sales Tax was nearly twice as much as the yield from income-tax. In pre-war Czechoslovakia, the revenue from the Sales Tax exceeded the revenue from Income-tax by about 50%. In pre-war Italy, the Sales Tax yielded only one-fourth of the income derived by the States from Income-tax.

But these two taxes are instances of two distinct schemes of taxation. While the Sales Tax is an instance of an *indirect tax*⁴ "a tax demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another⁴," the Income-tax is an instance of a *direct tax*, a tax demanded from the very person who, it is intended, should bear it⁴. Secondly, while the Sales Tax is levied usually on sales and is thus unrelated to the profits realised by the assessee, the Income-tax is levied on the income or profits⁴. One practical effect of this distinction is that bad debts are not usually excluded in the levy of the Sales Tax while the Income-tax Act contains provisions for the exclusion of bad debts in the determination of income for assessment. Secondly, while deductions on a comprehensive scale are permissible under section 10 of the Income-tax Act, no such deductions are allowed under the Sales Tax Act (See T. R. 5). So far as the Indian Constitution is concerned, Income tax is a federal subject,⁵ while, a tax on the sale of goods is a provincial subject, for purposes⁶ of taxation.

4. See Mill's "Principles of Political Economy" p. 823 (Ashley Edition). See also A. I. R. 1923 P. C. 282. A percentage tax on the gross revenue of coal mines held indirect tax while Income-tax is direct tax.

5. See Government of India Act 1935. Sec. 100 Sch. VII, list I, item 54.

6. *Ibid* Sec. 100 and Sch. VII, list II, item 48.

SALES TAX, TAXES ON THE SALE OF GOODS, TURNOVER TAX, TAXES ON SALES OF GOODS AND LUXURY TAX

The expression "sales tax", as its name implies is, a tax levied on sales and the words comprehend a good deal more than would be understood by a tax on the sale of goods. The 'sales tax' may be a mere producers' or manufacturers' tax, possibly covering services and enterprises also. But a *tax on the sale of goods* is restricted to transactions relating to goods or movable property and it necessarily excludes both a tax on *services* and a tax comprehending other forms of transfer, like mortgages, leases, etc. The words '*turnover tax*' are much wider and certainly include services, fees, commissions, etc., and many forms of transfer, like mortgages, leases, etc. Sulaman, J. draws a distinction between, *taxes on the sale of goods* and *taxes on sales of goods generally*. According to the learned Judge the latter are, while the former are not, confined to turnover tax on the gross sale proceeds only⁷. It may be noted that the words used in item 48 in list II (Provincial List) in the Government of India Act (1935) continued in the Indian Dominion with adaptations by the Independence Act (1947), are "*taxes on the sale of goods*" while the proposals for Indian Constitutional Reform (White Paper) and the report of the Joint Select Committee used the words "*taxes on the sales of commodities and on turnover*." The Madras General Sales Tax Act defines the terms 'goods' and 'turnover' and confines the tax to *sale of goods*, the levy of tax being calculated with reference to turnover of goods sold.

The Madras General Sales Tax as amended in 1947 is not only a *multipointed* tax levied *generally on sales*, but a tax on specified *luxury articles* as well levied at a *single point*. "*Taxes on luxuries*" is also an item in the Provincial Legislative list of subjects in the Government of India Act, 1935 (Item 50, list II of Schedule VII). In the provinces of Bombay, Central Provinces and United Provinces, and in the State of Mysore, sales tax at a higher percentage in respect of luxury articles is in operation.

SALES TAX—LAW IN INDIA

Besides our Province, sales tax is now in force in many of the Provinces of the Indian Dominion and Pakistan, *viz.*, Bombay (Act V of 1946), Western Bengal (Bengal Finance Act, 1941), Eastern Punjab (Act IV of 1941), Bihar (Act VI of 1944), Orissa, Central Provinces (Act XXI of 1947) and United Provinces. Since the provinces in Pakistan have temporarily vacated this provincial field of taxation in favour of a Central levy, Pakistan has a uniform Sales Tax throughout the Dominion from 1st April 1948, the tax being levied at a general rate of six pies in the rupee on the turnover at every stage beginning with the manufacturer or importer and ending with the retail seller. Cochin is the pioneer Indian State

7. In *re C. P. Motor Spirit Taxation Act* Observation of Guyer, C. J. and Sulaiman J. I.L.R. 1939 (Kar.) F.C. 6=1939 F.C.R. 15=189 Ind. Cas. 161=4, L.W. 36=1939 M.W.N. 25=A.I.R. 1939 F.C. 1=1939 (1) M.L.J. Supp. 1

that has introduced this tax. In Mysore and Travancore this tax has been introduced. Broadly speaking, Madras, the Eastern Punjab and the Indian States of Cochin and Mysore have, in operation, the cumulative or *multipointed* scheme of taxation (taxing every sale). The other Provinces have what may be called the *one-pointed system* of taxation, the tax being collected at the stage of sale to the public. The working of the one-pointed scheme is as follows there is suitable provision ensuring registration of dealers and exempting sales by one registered dealer to another registered dealer and tax is payable only at the stage of sale to an unregistered dealer or to the public.

OBJECT OF THE MADRAS GENERAL SALES TAX ACT

This measure of taxation was intended by the first Congress Ministry to augment the revenues of our Province with a view to give effect to certain programmes embodied in their Election Manifesto, e.g., the introduction of total prohibition, and substantial reduction of land tax, etc. Prohibition had been introduced in Salem and two other districts and there was need for an extension of the scheme to other districts. There was, consequently, "need for finding fresh sources of revenue to meet the increasing demands made on the Government."⁸ The other taxation measures passed in the Madras Legislature in 1939 were an Entertainments Tax, a tax on the Sale of Electricity, and Sales of Motor Spirit Taxation Act. The Premier explained⁹ that the right to find additional sources of revenue to make up the deficit created by prohibition, was implied in the endorsement of the policy of prohibition by the Legislatures, and that in the Schedule annexed to the Government of India Act, it is not possible to discover "any more paying, more elastic and more satisfactory measure than the sales tax."¹⁰

SUBSEQUENT HISTORY OF THE ACT AND INCOME FROM THE TAX

Towards the close of the year 1939, the Congress Party went out of office in Madras, and the Governor assumed charge by a proclamation of all the powers of the Legislatures and appointed an Advisory Council. In the subsequent years, the Budget estimates were framed by the Governor acting with his Advisers.

From 1939 to 1942 the Government maintained the *status quo* in respect of the prohibition measure then in operation in a few districts. With a view to limiting the net yield from the commercial taxes as nearly as possible to the equivalent of the loss caused by the prohibition measure, the rate of sales tax was reduced from $\frac{1}{2}\%$ to $\frac{1}{4}\%$ in 1940. This reduction was continued in 1941 and 1942.

With the progress of the War, inflationary tendency was manifest in note circulation. Government expenditure by reason of internal

8. Statement of Objects and Reasons.

9. Speech in the Madras Legislative Assembly on 31-3-1939 (Legislative Assembly Debates, Vol. XII, No. 1 p. 49).

10. Premier's speech in the Legislative Assembly on 31-3-1939. (Legislative Assembly Debates, Vol. XII, No 1 p. 51).

defence measures, schemes for procurement and distribution of food-stuffs, and payment of dearness allowance to Government servants increased. Need was also felt to build up an adequate reserve fund to finance Post-war Reconstruction Schemes, which were estimated to cost about 140 crores. Government, therefore, decided to increase taxes and by Act XVII of 1943 the rate of sales tax was increased to 1% with effect from 1st October, 1943.

From 1st April, 1943, the yield from sales tax increased still further. The flat tax rate of Rs. 5 was revised and two slab rates were fixed, *viz.*, Rs. 8 per mensem in the case of turnover from Rs. 10,000 to Rs. 15,000, and Rs. 12 per mensem in the case of turnover from Rs. 15,000 to Rs. 20,000. Secondly, owing to war conditions, speculative transactions of sale of bullion and specie at high prices increased and large profits were made by bullion merchants. With effect from 1st April, 1944, the Government withdrew the exemption in the case of bullion and specie (Act X of 1944). Thirdly, the scale of licence fees was raised with effect from 1st April, 1944.

With effect from 1st April, 1945 (Act VII of 1945), Government decided to restore the exemption in the case of bullion and specie as it was found that the tax caused hardship and that bullion business was migrating to neighbouring provinces and States as a result of the tax.

The income from sales tax was as follows :—

Soon after the close of the War, the Congress party again assumed office and prohibition was extended. In October 1947, two-thirds of the province became dry and the entire province was to become dry in October 1948, with consequent loss of Provincial revenue to the tune of 16 crores. Vital and far-reaching amendments were introduced by the Amending Act XXV of 1947 with a view to simplify the administration of the Act and raise the revenue from the tax to about twelve crores¹¹.

For the half-year 1939-40 the income was Rs. 33 lakhs. The income was Rs. 70 lakhs in 1940-41, Rs. 67 lakhs in 1941-42, Rs. 69 lakhs in 1942-43, Rs. 248 lakhs in 1943-44, Rs. 528 lakhs in 1944-45, Rs. 602 lakhs in 1945-46, Rs. 630 lakhs in 1946-47 and Rs. 8,32,51,000 in 1947-48¹².

Features of Amending Act of 1947

The chief features of the Amending Act of 1947 are : (1) an *extension* of the classes of persons on whom the tax system operates, *viz.*, contractors, agents of non-resident principals, (2) omission of some of the exemptions [Section 5 (*New*) and Sections 2 (a) (*New*)]; (3) granting some relief to newspapers and vesting power in Government to notify exemptions and reductions of tax in some cases [Sections 5 and 6A (*New*)]; (4) alteration of rates of tax in three ways, *viz.*, (a) single

11. Finance Minister's speech on 1-12-1947.

12. Finance Minister's speech on 10th October 1947 (Legislative Assembly Debates).

pointed tax on bullion at $\frac{1}{4}\%$, (b) levy of additional tax on luxuries at 3 pies or 6 pies in the rupee besides *general* tax, (c) raising the general tax to 3 pies in the rupee, and (5) amending the Act and introducing provisions to ensure successful working of the Act and to prevent evasion, *viz.*, (a) registration of dealers [8A (*New*)], (b) collection of tax and other amounts collected by dealers from customers [Secs. 8B and 15(b) to (g) (*New*)], (c) maintenance of accounts in regional languages [Section 13 (*New*)], (d) power to tax persons not observing conditions of licence [Section 6A (*New*)].

With effect from 1st April 1948 the scale of licence fees was revised and enhanced.

THE MADRAS GENERAL SALES TAX ACT AND THE BRITISH PURCHASE TAX COMPARED

It is sometimes fallaciously assumed that the amended Madras General Sales Tax Act bears a close resemblance to the Purchase Tax prevailing in the United Kingdom.

That the Madras Act, like the British Act, adopts two rates—one for *essential* goods and the other for luxuries—is true. But both the taxation enactments are diametrically opposed in vital respects. “To start with, the British Act is a *single pointed* tax system affecting only 14% of the national expenditure while the Madras Act is a multi-pointed tax system. While the British Act restricts the field of operation of the Act to the narrowest limits, the Madras Act aims at “maximising its sphere.” Thus, in the British Act, food, drink, fuel, children’s clothing, machinery for agricultural purposes, medicines and medical appliances are all free from tax. The higher rate of tax is applicable only to goods which people could do without, *e.g.* fur, silks, etc., and the lower rate of tax is applicable only to a *few* of the things used by the poor. In the Madras Act, on the other hand, the exemptions are very limited ¹³.

ECONOMISTS ON THE SALES TAX

While Comstock holds that “sales taxes have proved useful because they yield enormous sums even when they are imposed at a low rate,” and that the slight adverse influence of these taxes on the standard of living or on the industries of the country have not interfered with the financial success or the popularity of the taxation measures,¹⁴ Seligman, the celebrated economist, has expressed himself very strongly against taxation of sales. He says “a general sales tax is a discredited remnant of an outworn system; it is essentially undemocratic in nature and it would, if enacted, exaggerate rather than attenuate the present inequalities of wealth and income.” In India itself, while Dr. P. J. Thomas claims “that the sales taxes are not injurious to trade and that even certain sales taxes which are regressive in incidence are justifiable in the peculiar conditions of the country,” other economists

13. *The Hindu*, dated 1-11-1947.

14. Comstock “Taxation in the Modern State”, pp. 36, 37 and 123.

hold the view that sales taxes would cripple trade, promote industrial unrest, and increase unemployment.

Criticisms against the Madras General Sales Tax Act answered

Perhaps no measure of taxation has been subjected to such severe criticisms as the Madras General Sales Tax Act. Roughly speaking, the various criticisms levelled against the Act in the press, platform and in the Legislatures fall into two groups—firstly, criticism of the principle of the enactment, *i.e.*, taxation of sales and, secondly, criticism of the enactment itself with reference to its provisions in detail.

(i) Criticism of the Principle of the Act

In the first place, a general sales tax offends the four canons of taxation formulated by Adam Smith, *i.e.*, ability to pay, certainty of incidence, administrative convenience, and economy. The Colwyn Committee appointed to investigate the taxation system in the United Kingdom denounced the Sales Tax as offending the fundamental principle of taxation—ability to pay. This is, however, an academic objection which the sales tax shares with other indirect taxes. The second objection which is also theoretical is that it is a regressive tax, and that being a tax on consumption, it tends to raise prices, set free forces of inflation, promote labour unrest, increase agricultural indebtedness and thus hit the poor classes. But the working of the sales tax in our Province has shown that the adverse effect on the consumer or on the poor people particularly in these days of rising incomes, is slight. In fact, the chief merit in the tax is its quantitative insignificance. Thirdly, the view is held that the middlemen or the intermediary links in internal or foreign trade would get extinguished by this tax. It is also said that the tax would reduce the number of transfers and thus produce “vertical combinations.” Theoretically, the argument is correct but, in actual practice it has been found that “something weightier than 1% or 2% difference is necessary to eliminate any one type of business.” The first Premier of our Province, Mr. C. Rajagopalachari, even justified the elimination of intermediaries who, in his view, “are parasites gambling in trade, and he claimed that their elimination would lead to a healthy reorganisation and integration of business”¹⁵. Fourthly, it is said that the tax would lead to the migration of business to neighbouring Provinces and States. But, as the Premier explained in the Legislative Assembly in 1939 and as the Finance Minister explained in 1947, the levy of sales taxes at a low percentage would not make it worthwhile on the part of businessmen to shift their business to neighbouring States and Provinces¹⁶. The fundamental and moral justification for the levy of the Sales Tax is that it reconditions our tax

¹⁵ Premier's speech in the Legislative Council on 19th May 1939 (Legislative Council Debates, Vol. VIII, No. 8 p. 520).

¹⁶ Premier's speech in the Legislative Assembly on the 1st April 1939 (Legislative Assembly Debates Vol. XII, No. 2, pp. 182, 183).

system on sounder principles by 'broadening the basis of taxation'¹⁷. In the words of the Premier, the levy of the sales tax is a part of the scheme for re-adjusting the taxation burden, on the people of our Province¹⁸. Land Revenue and Excise, the chief sources of revenue for our Province, are unjust taxes, the former being an excise duty on the production of foodstuffs, and the latter being a sales tax on the sale of drink borne only by 3 to 5 million people¹⁹. Taking the figures for 1938-39, the mercantile community of Madras were contributing not more than a few lakhs to the Provincial Revenues, their contribution of nearly a crore and a half as Income-tax being paid only to the Central Exchequer²⁰. The levy of sales tax, would, it was claimed by the protagonists of the tax, have the effect of shifting the tax burden from the shoulders of the poor to the merchant class and the consumer class. It was also claimed that when there is a large margin of profit, competition among the mercantile community would ensure the payment of the tax from the margin of profit and that businessmen would retain the burden so far as they could and they would transfer the burden to the consumer only when they could not bear it. This is another peculiarly satisfactory feature of this tax.

(ii) Criticism of the Provisions of the Act

One of the points urged against the new provision for registration of dealers is that it would not only put small dealers to hardship but would require large administrative staff. Increased expenditure, if any in administrative charges, it must be admitted, is certainly not likely to prove uneconomical in view of the large additional income anticipated. But a strong point in favour of the registration of dealers is that it would certainly lead to efficient working of the Act and prevent evasion by bringing assesseees with marginal turnovers within the control of the department.²¹ The provision for taxing luxury articles at increased rates was subjected to severe criticism. It was said that, in most cases, it is difficult to determine what a luxury article is. It was urged, for instance, that while petrol for a taxi car may be a luxury, when used for a bus it is a necessary article. Similarly toilet soap is a luxury while washing soap is a necessary and essential article. Again, while watches may be luxury articles, clocks are necessary goods. Apart from this kind of academic criticism, a broad line, it must be admitted, nevertheless exists between luxury goods and essential goods. A strong point in favour of increased rate on luxury articles is this :—While a tax of uniform incidence does

17. Speech of Dr. P. J. Thomas, in the Legislative Council on 19th May 1939 (Legislative Council Debates Vol. VIII, No. 8, pp. 523 and 524).

18. Speech of the Premier in 1939 (Legislative Council Debates Vol. VIII, p 361).

19. Speeches in the Legislative Council on 17th and 19th May 1939, by the Premier and Dr. P. J. Thomas.

20. Speech of the Premier in the Legislative Assembly on 1st April, 1939.

21. In the first edition of this book and in communications to Government in 1944 the present writer urged the need for this provision.

not satisfy the test of ability to pay, a tax on luxury articles at a higher percentage does certainly satisfy this test.²² Again it was contended that it would be cumbersome to maintain different sets of accounts for varying rates of taxes applicable to different articles. This objection also can be easily answered. The Amending Act introduces only two groups of variations in luxury tax (3 pies and 6 pies), and not much administrative difficulty is likely to be felt by the mercantile world. A third objection very incessantly urged was that the luxury tax would reduce consumption and that in the case of imported articles such reduction would prejudicially affect the Customs revenue. It was also urged that the tax would drive business to neighbouring States, or at any rate increase the cost of living and produce industrial unrest. It was also contended that with the increase in rate the chief merit of the tax system *viz.*, quantitative insignificance also vanishes. These objections are also academic. As pointed out by ex-Minister Mr. K. R. Karanth²³ in England, the public sustain a very high purchase tax varying from 40 to 200% and in India at least a tax at slightly increased rates can be sustained. In fact, the tax even at enhanced rates is only a fraction of the high prices, people are paying for goods sold by merchants. The fear of migration of business is unjustified, since with the introduction of sales tax in neighbouring Provinces and States, such possibility must be ruled out.

The provision taxing contractors was also severely criticised. It was said that housing is one of the necessities of life, and a tax on brick, lime and cement used in building contracts would interfere with house building programmes. As the Finance Minister pointed out in his reply to this criticism, contractors make some profit even in regard to the materials supplied and used in constructions, and the State would be justified in taxing the transaction in so far as there is also sale of materials involved in the contract made²⁴ with business motive.

The absence of a Tribunal to decide questions under this Act was criticised and in the Legislative Assembly a vigorous appeal was made to the Government to constitute a Sales Tax Appellate Tribunal on the lines of the Income-Tax Appellate Tribunal. The Finance Minister assured that necessary steps will be taken to constitute such a Tribunal²⁵. The bar of jurisdiction of Courts (expressly or by implication) to decide questions under this Act was also criticised. But it must be admitted that dilatoriness involved in civil court procedure is unsuited to revenue matters. In fact, Central Excise and Land Revenue are outside the scope of Civil Court's adjudication.

Detailed criticism relates to absence of exemptions or inadequacy of exemptions. To start with the exemption of commodities, the

22. In the first edition of this book and in communications to Government in 1944 the present writer urged the need for levy of luxury tax.

23. Speech in the Legislative Assembly on 11th October 1947.

24. Finance Minister's reply on 15th October 1947.

25. Finance Minister's speech on 15th October 1947 and 1st December 1947.

absence of any provision exempting foodstuffs and other necessities of life deserves notice. "Even a rich country like the United States of America has introduced specific provisions exempting such commodities of necessity as cereals, meat, milk, bread and sugar"²⁶. In some countries "agricultural products and other natural products have been exempted"²⁶ But the only exemption granted in favour of the agriculturist in the present Act is the proviso to S. 2 (i) providing that the proceeds of the sale of agricultural and horticultural produce in a limited class of cases shall be excluded in the determination of turnover. In the Madras Legislative Council an amendment to exclude foodstuffs from the operation of the Act was negatived. As the Premier pointed out in 1939, the effect of such an exemption would be only to increase administrative difficulties without conferring adequate advantage, for while the villager spends only a few rupees every month in his purchase of commodities and would pay a few annas as tax, great difficulties would be caused to the State in the calculation of exemptions in regard to turnover.²⁷

Secondly, a plea was put forward for the enlargement of exemptions so as to exclude exports of both raw materials and manufactured articles. The Sales Tax in its application to articles of export would affect the "competitive strength (of our province) in the matter of supply to neighbouring provinces,"²⁸ States and even foreign countries. The Government to some extent recognised the force of this objection and incorporated provisions in the principal and amending Bill in the Select Committee stage allowing a rebate in respect of certain articles and exemptions from tax in the case of tea and handloom cloth exported from the Province (Secs. 5 and 7) and provided also for the levy of tax at only one point in respect of some articles like hides and skins (Section 5). It must, however, be admitted that the exemptions do not go far enough. For instance, copra and cocoanut, though they are articles of export, do not get any exemption. In the Legislative Council, amendments to extend the benefit of the single pointed taxation to groundnut, onions and turmeric and timber which are articles of export were negatived. In view of the infant nature of the sugar industry, a plea to extend the benefit of single pointed taxation to sugar and jaggery was put forward but it was unsuccessful. The Premier resolutely set his face against any extension of the list of exemptions on two grounds. Firstly, he held that in view of the low incidence of the tax, exports are not likely to be affected. Secondly, the Act is a taxation measure and not a measure intended to protect one industry or trade in preference to another²⁸.

Coming to the exemption as applied to "Persons" the absence of provision exempting co-operative societies from the purview of the

26. Memorandum of the South Indian Chamber of Commerce.

27. Premier's reply in the Legislative Council on 18th May. (Legislative Council Debates Vol. VIII, No. 7, p. 495).

28. Premier's speech in the Legislative Council on 19th May 1939 (Legislative Council Debates, Vol. VIII, No. 8, p. 505).

Act was subjected to criticism in the Legislatures. But the Premier held that the proper way of helping co-operative societies is by granting stipends and other kinds of special help and not by giving exemptions from the normal incidence of trade²⁹. The need for exempting a territory like British Cochin in view of the nearness of the place to the Cochin State was pointed out in the Legislative Council. The Premier rightly opposed the exclusion of British Cochin from the purview of the measure and felt that business may not prove to be so mobile as to move to the State as a consequence of the tax³⁰. It may be noticed that a form of Sales Tax is now in operation in this small State.

Another major criticism of this Act was with respect to the cumulative character of taxation. On the analogy of the Bombay Sales Tax Act then in operation (in 1939) an unsuccessful attempt was made in the Legislative Assembly to confine the levy of tax in the Act to one point, 'retail sale to the consumer'³¹. At least from the point of administrative convenience, taxation of wholesalers in preference to retail dealers has something to commend itself. Wholesalers maintain proper accounts and the determination of turnover and the collection of tax would be easy. But the income to the State would be inadequate unless the rate is fixed sufficiently high. Taxation at the retail stage has on the other hand nothing to commend itself.

Another line of major attack against the provisions, related to the rate of the tax, the percentage of the tax and the exemption limit of turnover³². But the Premier being anxious for a decent return of the tax resolutely stood against all attempts to lower the rate of tax or the percentage of tax or to raise the exemption limit. Some of the other criticisms against the Act relate to the hardship consequent on the provisions relating to the maintenance of accounts by small traders, the 'inquisitorial' powers given to officers in Sec. 14 and the non-exclusion of bad debts in the determination of turnover, and other minor matters³³.

The answer to all these detailed criticisms is that there is provision in the Amended Act [Section 6] empowering the Government to notify exemptions or reductions or modifications in the light of the working of the Act. This power has been used in the case of dealers of vegetables and fruits, jute, etc. (See Section 6 commentaries). The Finance Minister has constituted an Advisory Committee to advise

29. Premier's speech in the Legislative Council in 18th May 1939 (Legislative Council Debates, Vol. No. 7, p. 463) and Legislative Assembly Debates, Vol. XII, No. 9, pp. 623-626.

30. Premier's speech in the Legislative Council on 18th May 1939 (*Ibid* p. 467).

31. See commentary to Sec. 3. (Legislative Assembly Debates, Vol. XII pp. 658 to 830 and Legislative Council Debates, Vol. VIII, pp. 473, 500).

32. Amendment of Mr. Bakavatsalam in the Legislative Assembly. (Legislative Assembly Debates, Vol. XII, No. 8, p. 582).

33. Some of the criticisms relating to specific provisions of this Act are indicated in the commentaries. Non-exclusion of bad debt (Legislative Council debate Vol. VIII, p. 473-474.)

the Government so that the powers under Section 6 could be used in consultation with the interests of the mercantile public.

(iii) Criticism of the Administrative Machinery

The working of the Act has revealed the need for proper safeguards to protect the mercantile community against the misuse of the taxation provisions. It is possible to provide for such safeguards without adversely affecting the revenues of the State. There have been instances of evasion of tax, and consequent loss of revenue to the Government, owing to the officers not being well equipped in the matter of checking the accounts of assesseees. There have been also instances of assessments on poor goldsmiths, servants, wage-earners, petty merchants, etc., being sustained in appeal merely because the assessee has no accounts to disprove the assessing authority's statement. In the case of provisional assessments the appellate authorities under the Act have in many cases set their face against even a fundamental plea that the assessee is not a dealer, on the ground that the question must be agitated in the finalisation proceedings which view, it is submitted, is incorrect. Thus, the right of appeal has been to some extent shadowy.

There is need for the following changes ³⁴ in the machinery :—

- (i) The authorities administering the Act must be well-versed in accounts, and the principles of this taxation measure.
- (ii) There is need for separating the administrative from the appellate and revisional side of the Taxation machinery.
- (iii) There is need for reference to High Court on matters of law.
- (iv) The constitution of an Appellate Tribunal is long overdue.

LEGALITY OF THE TAX

(i) Taxation of Purchaser

The present Act levies a tax on the basis of the turnover of a dealer. (S. 3) 'Turnover' in this Act represents the aggregate amount "for which goods are either bought or sold" (S. 2-i). The term 'dealer' is defined as a person who carries on the business of 'buying' or 'selling' goods and the term 'sale' has been defined as the transfer of the property in goods.

The preamble shows that this Act is intended for the levy of a tax on the sale of goods in the province of Madras. But the definitions extracted above show that the purchaser also is included in the term 'dealer'.

The inclusion of the purchaser within the definition of the term 'dealer' has been subjected to some criticism. By this extended definition of the term 'dealer' the Legislature has granted power to collect the tax from the purchaser of goods. Item 48 of List II of

34. As early as 1941, the present writer suggested to the Hon'ble Advisers, then administering this Province, the need for these changes. In Bombay there is an Appellate Tribunal for Sales Tax. In the Sales Tax Act in force in West Bengal, Bihar Cochin, Central Provinces and Bombay, there is provision for reference to High Court.

Sch. VII read with Section 100 (3) of the Government of India Act no doubt gives the Provincial Legislature power to legislate with reference to the sale of goods. But, it may be plausibly argued that a tax on 'purchase' is a specific item of taxation which has not been granted either to the Provinces or to Dominion (Federation) and that, unless this item of taxation is assigned to the Provinces under Section 104 of the Government of India Act by the Governor-General, a tax on purchase is outside the purview of the Provincial Legislature. This argument is unsustainable, for it assumes that sale and purchase are two independent transactions which they are not. They are but parts of one indivisible transaction, which, from the point of view of the purchaser, is purchase and from the point of view of the seller, is sale. "The Legislature has been given the power to tax the transaction which *sale* connotes," and this power carries with it the power to tax either the seller or the purchaser. "Customarily the vendor rather than the vendee is liable for the tax although both may be held responsible for the proper payment of the tax".³⁵ It may be mentioned that in the draft constitution presented to the Constituent Assembly, the words used in the State list are "taxes on the sale, turnover or purchase of goods".

(ii) Sales Tax and Excise

Secondly, a general sales tax comprehends also a tax on the sale of goods produced or manufactured in India. Is such a tax *ultra vires* of the Provincial Legislature? Does such a tax amount to a levy of "duty of excise on goods manufactured or produced in India"—a subject of taxation reserved exclusively for the Central or Dominion (Federal) Legislature³⁶.

So far as the Government of India Act (1935) is concerned, there is no distinction between a tax and a duty, for the term taxation includes any tax or impost whether general or local or special³⁷. So, in considering whether an enactment like the Madras General Sales Tax Act is a measure that is substantially a duty or tax reserved for the Dominion or Federal Legislature, the pith and substance of the enactment³⁸ must be referred to. In 1938, upholding the validity of the Central Provinces Motor Spirit Taxation Act, the Federal Court held as follows:—The general power of the Central (or Dominion) or Federal Government to levy an excise duty³⁹ at *all stages* from manufacture to consumption, is subject to the exceptional power given to the provinces to levy a tax at the *stage of the sale of goods*, and the Central Government has therefore no power

35. Seligman and Johnson in "Encyclopedia of Social Sciences" Vol. IV, p. 517. Cited in *re* Motor Spirit Act case A.I.R. 1939 F.C.I. See Legislative Assembly Debates, Vol. XII No. 8 pp. 572 to 574.

36. Item 45, List I, Schedule VII, Government of India Act.

37. Sec. 311, Government of India Act.

38. 1928 A.C. 328 at p. 337. See in *re* Motor Spirit Taxation Act case A.I.R. 1939 F.C.I. where substance of the Central Provinces Act and the object of the Act are considered.

39. Item 45 List I in Schedule VII, Government of India Act.

to levy a tax on the manufactured goods at *the stage of sale* in the provinces. The Federal Court discussed and upheld also the validity of Provincial Government's taxation even of the *first sale* by the manufacturer on the principle that such taxation is "not intended to impose any special burden on goods manufactured in India, and that the object of such a tax is to recover revenue on *all sales* irrespective of the origin of the goods. In the words of the Hon'ble Judges of the Federal Court "the amount assessed depends on the sale price"³⁸ and in pith and substance, it is a General Sales Tax and is thus *intra vires* of the Provincial Legislature"⁴⁰.

In 1945 the Judicial Committee of the Privy Council held⁴¹ affirming the decisions of the Federal Court⁴² that the Madras General Sales Tax Act is in its pith and substance a tax on the sale of goods and is precisely within entry 48 of the Provincial Legislature list and not within entry 45 of the Federal Legislative List. "It is not a duty of Excise in the cloak of a tax on sales as it lacks the characteristic features of a duty of Excise such as uniformity of incidence and discrimination in subject matter. In its general scope and detailed provisions it is a tax on sales and is not *ultra vires*, though by reason of its cumulative system of taxation, the first sale by the manufacturer also is taxed. The Government of India Act, 1935, confers powers on the Provincial Legislatures to tax every sale including even the first sale by the manufacturer or producer. Such tax on the first sale by the manufacturer is distinct from *excise* duty. The former is a tax on *sales* or proceeds of sales while the latter is a tax upon *goods*. The two taxes, one levied upon a *manufacturer* in respect of his *goods* (excise duty) and the other upon a *vendor* in respect of his first *sale* may in a sense overlap by reason of accidental coincidence in their method of collection. But economically and legally there is no overlapping and they are distinct, separate and valid imposts." Sales Tax is not of the essence of Excise duty which is attracted by manufacture as such. So the authorities competent to impose Excise duty [Federal Legislature in respect of goods covered by item 45 of Federal Legislative list or even the Provincial Legislature in respect of goods excepted therefrom and covered by item 40 of Provincial Legisla-

40. Sulaiman J. holds that in extreme cases, however, the imposition of a tax on the first sale of certain specified goods produced or manufactured in India may be so closely connected with production or manufacture as to become an excise duty though it only purports to be a tax on the first sale of such goods. In such cases, if the pith and substance of the Act shows that it is an excise tax on the first sale, the tax is *ultra vires*. For instance, if Bengal imposes a tax on the first sale of only jute it would be an excise duty and not a sales tax. A.I.R. 1939 F.C. I.

41. G.G. in Council v. Province of Madras 1945 (1) M.L. J. 225, = A.I.R. 1945 P.C. 98.

42. Province of Madras v. Paidanna 1942 (2) M.L.J. 327 = A.I.R. 1942 F.C. 33.

G.G. in Council v. Province of Madras 1943 (1) M.L.J. 345 = A.I.R. 1943 F.C. 1.

The decision of the Federal Court overruled the decision of the Madras High Court in 1941 (2) M.L.J. 607 = A.I.R. 1941 Mad. 913 = Province of Madras v. Paidanna.

tive list] may impose firstly a duty of excise upon the manufacturer of excisable goods and secondly the *Provincial Legislature* may impose a tax upon the *first* sale of the same goods when sold by the manufacturer (item 48 of Provincial Legislative List)

(iii) Sales Tax and import and export duties

Import duties (Customs) and Export duties are subjects of taxation within the exclusive competence of the Central or (Dominion) Federal Legislature ⁴³. Under the Madras General Sales Tax Act sales of articles of import and export are also taxed. Applying the phraseology used by the Federal Court in *Motor Spirit Taxation Act case*, it is clear that the object of this Act is to recover revenue on *all* sales of goods irrespective of the origin of goods. The tax levied depends on the turnover which is determined by the sale price. So the tax levied is not an import or export duty though articles of export and import are also subject to tax burden at the time of sale. It may be that a tax on the first sale of imported articles approaches an import duty ⁴⁴. But, regard being had to the comprehensive character of the tax, as applied to sales of *all* goods, the tax cannot be held to be an import duty.

LEGAL PROBLEMS IN WORKING THE ACT

See—

(i) Under Section 14-A.—“*Section 14-A and General Law.*”

(ii) Under Section 2 (h).—“*Place of Sale*” ; “*Hire-Purchase Agreement.*”

(iii) Under Section 8.—“*Scope and application of the Provisions*”

(iv) **Difficulties due to Inter-Provincial competition.**—Suppose in Sales Tax enactments in Provinces A, B and C, the place where the *goods are* at the time of sale¹, the place where the *contract is entered* into, and the place where the *goods are delivered* are respectively deemed places of sale. Suppose also in respect of a contract, while the *goods are* in Province A, the contract is entered into in Province B, and the delivery is effected in Province C, it is clear that the same goods would be taxed thrice over in respect of one single transaction of sale. Apart from being illegal such triple taxation would prejudicially affect trade. To avoid both inter-provincial competition, and evasion of tax, it is desirable that an All-India Sales Tax Act applicable to all Provinces may be devised².

⁴³ Sec 140 and Item 44 List I of Schedule VII, Government of India Act.

⁴⁴. A tax on the *first* sale of certain articles mainly imported is an import duty. Per Sulaiman J. in *A.I.R.* 1939 F.C.I.

1. See Section 2 (h). explanation 2 (new).

2. Mr. T. T. Krishnamachari in an article to the *Hindu* (Independence Supplement), dated 15th August 1947

pleaded for a uniform and co-ordinated Sales Tax for India to prevent provincial lopsidedness and to ensure uniform economic improvement throughout the country. The Finance Minister of Bombay has recently suggested the need for a uniform Sales Tax throughout the Indian Dominion. In the sister Dominion of Pakistan, it may be mentioned, a Central Sales Tax law is in operation.

(A) Interpretation of the provisions.—The provisions of this enactment broadly fall into five divisions.

- (1) The taxation provisions (Section 3).
- (2) The licensing provisions (Sections 5, 6, 8)
- (3) The penal provisions (Sections 15 and 16).
- (4) The provisions embodied in the rules
- (5) The provisions restricting the right of action in the Civil Court and protecting the acts of public servant (Sections 17 and 18).
- (6) Exceptions, Explanations and Provisos

(1) Taxation provisions.—An enactment imposing a pecuniary burden³ must be construed strictly⁴ without straining the language of the Act for the purpose of holding a person liable to tax⁵, for the principle of law is that a subject is not liable to be taxed unless he comes within the letter of the law and unless there is a definite statute strictly interpreted⁶, or in other words unless the Crown brings the subject within the letter of the statute⁷. When there is an ambiguity or doubt, construction must be in favour of and beneficial to the subject⁸ and against the Crown⁹. Thirdly, the principle is also well established that when a question of forfeiture of rights is involved, preference should be given to a construction favourable to the subject¹⁰. Fourthly, short of bringing himself within the penal provisions of law, like submitting a false return, etc., a subject can adopt all means not forbidden by law to escape taxation¹¹. Fifthly, there can be no equitable construction of a fiscal enactment¹² and the words in the Act must receive a natural and ordinary construction¹³. Sixthly, unless specifically exempted, even the Crown is bound by a fiscal enactment¹⁴

3. A.I.R. 1937 Nag 11

4. See "Maxwell's Interpretation of Statutes" pp. 200 and 463 (4th Edition),

4 A.I.R. 1939 All. 466. (F.B.).

A.I.R. 1936 Cal. 813.

A.I.R. 1943 Pat. 433 (C.F. Act).

A.I.R. 1946 Lah. 265 Stamp Duty Penalty.

A.I.R. 1932 Mad. 474.

5. A.I.R. 1931 Bom. 333.

A.I.R. 1935 Bom. 423.

6. A.I.R. 1931 Mad. 683.

7. A.I.R. 1940 P.C. 183.

A.I.R. 1929 Lah. 609; A.I.R. 1930 Cal. 641. (F.B.).

8. A.I.R. 1938 Mad. 498 (C.F. Act).

A.I.R. 1940 Nag. 400.

A.I.R. 1945 Sind 116.

A.I.R. 1945 Bom. 271.

A.I.R. 1945 Oudh 35.

A.I.R. 1916 Nag. 246 (I. T. Act)
To consider whether Crown loses is wrong approach

A.I.R. 1937 Mad. 604.

A.I.R. 1930 Mad. 626.

A.I.R. 1928 Mad. 569.

A.I.R. 1933 Rang. 68.

A.I.R. 1936 Cal. 814.

9. A.I.R. 1935 Pat. 396 (F.B.).

10. A.I.R. 1937 Pat. 550 (F.B.).

A.I.R. 1929 Mad. 60.

11. A.I.R. 1930 Pat. 33 (F.B.).

A.I.R. 1928 All. 81 (F.B.).

A.I.R. 1928 Mad. 543.

A.I.R. 1929 All. 919.

12. A.I.R. 1931 Lah. 572.

A.I.R. 1929 Lah. 609.

A.I.R. 1936 Cal. 814.

See also 32 C.L.J. 421.

13. A.I.R. 1927 Cal. 432 (F.B.).

14. Per Beaumont 'C.J.' A.I.R. 1935 Bom. 347. Case under Bom. Municipal Act.

though in respect of ordinary Acts the Crown is not subject unless named expressly or by implication¹⁵. Seventhly, in construing a fiscal statute neither the intention of the Legislature¹⁶ nor the principle involved in the Legislation¹⁷ is relevant. Eighthly, even technicalities have to be strained in favour of the subject¹⁸.

(2) **Licensing Provisions** ¹⁹.—See Sections 5, 8, 17 and 18.

(3) **Penal Provisions** ²⁰.—The provisions in Section 15 and in some of the rules being penal in nature, they must be construed in a strict ²¹ and narrow sense.²² Firstly, courts must see that the thing charged as an offence is within the plain meaning of the words used.²³ The court must not hold that a penalty has been incurred unless the clause imposing it is so clear that the case falls within it²⁴ for, it is not the function of the court to extend the scope of an enactment because the Legislature has not used sufficiently comprehensive words²⁵ or that the words used are obscure.^{25-A} Secondly, if two constructions are possible, one imposing a penalty and the other not imposing a penalty, the latter construction²⁶ which is favourable to the subject must be preferred.²⁷ The benefit of doubt must in such cases be exercised in favour of the subject²⁸ and against the Legislature which has failed to explain itself.²⁹ Thirdly, penal statutes should be construed so as to protect the liberties of the subject.³⁰ Fourthly, a construction which would mitigate a penalty should be preferred to another construction which would aggravate it.³¹ Fifthly, the person charged has a right to say that the thing charged is not within the spirit of the enactment though it is within the letter of the words used.³² Sixthly, courts must avoid a construction which is patently oppressive and must prefer one that protects a person from fresh prosecution for the same offence.³³ Seventhly, penal statutes are presumed to enact prospectively and not

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| 15. Beaumont, C.J., in A.I.R. 1934 Bom. 379. See also A.I.R. 1947 P.C. 34. | 24. A.I.R. 1934 Sind 46. |
| 16. A.I.R. 1934 Pat. 178. | 25. A.I.R. 1927 Lah. 276. |
| 17. A.I.R. 1931 Oudh 366. | 25A. 1947 (1) M. L.J. 331. |
| 18. A.I.R. 1937 Oudh. 116. | 26. A.I.R. 1934 Sind 46. |
| 19. Ss. 5 & 8 of the Act and General Sales Tax Rules. | 27. A.I.R. 1929 Lah. 641. |
| 20. See Sec. 15 and G.S.T.R. 32. | A.I.R. 1930 M.W.N. 249 (F.B.) (Case relating to Cr. P.C.) |
| 21. A.I.R. 1943 Pat. 315. A.I.R. 1927 Cal. 724, (I.T.Act. Case.) | A.I.R. 1942 Lah. 253. |
| See also A.I.R. 1925 Mad. 239 (Case under Penal Code). | A.I.R. 1930 All. 265 (F.B.) |
| A.I.R. 1929 Lah. 163 (Case under Penal Code). | 28. A.I.R. 1928 Sind 1 (F.B.) |
| A.I.R. 1931 Nag. 177. | A.I.R. 1932 Nag. 174. |
| A.I.R. 1927 All. 599 (Court of Wards Act) | A.I.R. 1929 All. 210. |
| See Maxwell's "Interpretation of Statutes" p. 425 (4th Edition). | 29. A.I.R. 1936 Nag. 55. |
| 22. A.I.R. 1926 Nag. 137. | 30. A.I.R. 1934 Lah. 264 (Construction of Press Emergency Powers Act.) |
| 23. (1872) L.R. 4 P.C. 184. | A.I.R. 1931 Lah. 476 (decision under Cr. P.C.) |
| A.I.R. 1926 Bom. 57. | 31. A.I.R. 1926 Sind 273. |
| A.I.R. 1939 Mad. 963. | 32. A.I.R. 1926 Cal. 927; |
| | See also (1872) L.R. 4 P. C. 184. |
| | 33. A.I.R. 1935 Mad. 56(2). |

retrospectively.³⁴ Eighthly, courts will decline to supply even an obvious omission if to do so would entail conviction^{34A}.

(4) Rules and Rule-making provisions.—Firstly, rules framed under an Act are not law unless the statute specifically states so.³⁵ Rules under this Act must be construed as if they are part of this Act.³⁶ Secondly, the rules framed under an Act should be consistent with the Act³⁷ and must be reasonable.³⁸ If the rules are in contravention of or inconsistent with or repugnant to³⁸ or otherwise in excess of the provisions of the Act, the rules would be *ultra vires* of the statute.³⁹ Rules enforceable by penalties must be construed like other provisions encroaching on the ordinary rights of persons³⁸ in a strict manner.

(5) Provisions restricting the right of action in the Civil Court (See Sections 17 and 18).

Action against Crown servants.—See under Sections 17 & 18.

Proceedings in Civil Courts.—See under sections 17 & 18.

(6) Construction of Exceptions, Explanations and Provisos

Exceptions.—There are clauses in the nature of exceptions tacked on, for instance, to Section 12. Exceptions do not affect the general rule and they should be strictly construed.⁴⁰ (See also below 'provisos').

Explanations.—Explanations have been inserted in this enactment in 2(h) and 2(i). Explanations inserted in a section only explain the section and point out the real scope of the sections. They cannot enlarge the scope of the section.⁴¹

Provisos.—Provisos are used in Sections 2 (i), 3, 8, 9 and 11 and Turnover Rule 5 (1)(a) to (f). The proper function of a proviso is to except and deal with a case which otherwise would fall within the general enactment. Except to the extent *confined by the proviso*, the substantive enactment is unqualified. Provisos must⁴² receive a strict construction.⁴³ It is not legitimate to hold that, by mere implication, a proviso withdraws anything which the main provision has given.⁴² The effect of a proviso is to take

34. A.I.R. 1931 Lah. 145.
A.I.R. 1942 Mad. 736(1) T.R. 11
operates prospectively.

34A. A.I.R. 1945 Mad. 441.

35. A.I.R. 1923 Pat. 1 (S.B.).
See Sec. 19(5) of this Act declar-
ing rules to be law.
35 M.L.J. 736.

36. See Maxwell's Interpretation of
statutes p. 76 (3rd Edition)
A.I.R. 1945 Pat 69.
35 M.L.J. 736.

37. A.I.R. 1934 Sind 110.
A.I.R. 1931 Lah. 476.
A.I.R. 1934 Cal. 537.

38. See Maxwell's Interpretation of
statutes p. 481. (4th Edition)

39. A.I.R. 1934 Cal. 537.
See A.I.R. 1932 M. W.N. 873
Bye-law held *ultra vires*.

40. A.I.R. 1929 Oudh 389.

41. A.I.R. 1939 Lah. 587.

42. A.I.R. 1944 P.C. 71 construction
of proviso in Municipal Act.
A.I.R. 1927 Nag. 68.

43. A.I.R. 1932 Mad. 46.
A.I.R. 1933 Oudh 491.

something out of the scope of the section⁴⁴ as in the case of Section 2 (i) [agricultural produce]. But a proviso cannot extend the operative part of the section unless there is real ambiguity in the substantive section itself. ⁴⁴.A

(B) INTERPRETATION OF SOME OF THE WORDS USED IN THE ACT AND THE RULES

May.—The word 'may' is used in Sections 11, 12, 14 and 16 and in Turnover Rule 13 and other rules as well. The word 'may' *prima facie* indicates a discretionary power of an enabling character and it is in this sense that the word is used in most of the sections in this Act. But in Section 8 the word seems to have a mandatory character. If an agent fulfils the requirements of Section 8, can the Provincial Government refuse to grant him a licence? The answer is in the negative. The power to license is vested in the Provincial Government not for the benefit of the Government but for the benefit of the Public. The use of the word 'may' in Section 8 seems to indicate something of a statutory duty⁴⁵ for power is vested in the Government for public good.

Shall.—The word 'shall' has been used in Sections 1 (3), 2 (h), 3, 5, 7, 9, 11, 13, 14, 17 and 18 and in G. S. T. R. 5(1), T. R. 6, 7, 8, 9, 10 to 17. The word connotes something of a mandatory character.

Restrictions and conditions.—These words occur in Section 2 (i) explanation and Sections 5 to 7. A condition is a *stipulation* upon whose fulfilment depends the application of exemption. Restrictions are limits imposed on the exemption to be claimed under this statute. Thus, on non-fulfilment of the conditions of licence, etc., prescribed or restrictions imposed, the benefit otherwise available under Sections 5, 6, etc., would be unavailable.

Subject to.—The effect of the use of the words, is that the provisions of the sections in which these words occur, apply only to the extent they do not conflict with the other provisions to which the sections are subject to. Thus Section 3 is subject to Sections 4, 5, 8, etc. So where these latter sections apply, there is no question of taxation under Section 3.

(C) SOME AIDS IN THE CONSTRUCTION OF THE ACT

(i) Preamble and Enacting part.—The preamble is the key to the understanding of an enactment.⁴⁶ It is the preamble and enacting

44. A.I.R. 1930 Mad. 124.

44-A. A.I.R. 1926 Cal. 927.

45. [1880] 5 A.C. 214.

47 Bom. 742 P.C. 'May' in Sec. 51 Income Tax Act of 1918 construed.

A.I.R. 1937 Mad. 51.

Decision under Section 23 Court of Wards Act. Use of

'may' held to indicate statutory duty. See also A.I.R. 1931 Pat. 1.

A.I.R. 1930 Rang. 297. See also Maxwell's Interpretation of Statutes p. 361.

46. A.I.R. 1944 Lah. 302.

A.I.R. 1936 All 507.

A.I.R. 1934 Cal. 741.

part that reveal the dominating object of the Legislature in enacting the Legislation.^{46-a} Two propositions are quite clear—one that a preamble may afford useful light as to what a statute intends to reach, and another that if the enactment is clear and unambiguous, no preamble can cut or qualify the enactment". (Lord Halsbury). In other words: (1) When the language and object of an enactment are not open to doubt, the preamble cannot be referred to for restricting or extending the enacting part of it. (2) Where however there is ambiguity in the enactment, the preamble may be referred to for clearing up, or explaining, or elucidating the text of the enactment or for fixing or keeping the effect of the Act within its real scope.⁴⁷

(ii) **Full title.**—It is legitimate to use the full title of an enactment to throw light on the scope and progress of the enactment.⁴⁸

(iii) **Short title.**—The short title is, however, chosen merely for convenience, its object being identification and not description. It is not legitimate to give any weight to the short title in throwing light on the scope and purpose of an enactment.⁴⁸

(iv) **Use of marginal notes.**—Where the section itself is clear,—reference to the marginal note is not permissible.⁴⁹ But, when the language of the statute is not clear can the marginal note be pressed into service? See below.⁵⁰

RULE AGAINST DOUBLE TAXATION

In considering how far this Act embodies the principle of avoiding double taxation, the question has to be considered from two aspects, i. e., (1) persons and (2) goods.

In the former category falls the rule embodied in Section 3 (5) *proviso* that the same person shall not be taxed twice, both as a purchasing dealer and as a selling dealer when he purchases and sells the same goods. Similarly, when an agent sells goods on behalf of the principal, the former is exempt, if the latter is subject to this measure of taxation (Section 8).

Under the latter category fall the provisions embodied in Section 4, Section 2 (i), and Section 3. An accommodating dealer is exempt from

46-A. A.I.R. 1932 Oudh 152-(F.B.).

A.I.R. 1936 All 507.

47. A.I.R. 1943 Cal. 285.

A.I.R. 1943 F. C. 36.

A.I.R. 1944 Lah. 302.

A.I.R. 1936 Cal. 593.

A.I.R. 1934 Cal. 741.

A.I.R. 1938 Mad. 441.

A.I.R. 1931 Mad. 629.

A.I.R. 1936 All 507.

A.I.R. 1932 All 617.

A.I.R. 1931 Cal. 706.

48. A.I.R. 1936 Cal. 593.

49. A.I.R. 1927 Mad. 186 and 85.

See also 42 Mad. 451.

A.I.R. 1938 Bom. 284.

50. Can be used. See

A.I.R. 1924 Mad. 389.

A.I.R. 1932 Nag. 174.

A.I.R. 1925 All. 503 (F.B.).

A.I.R. 1935 Bom. 347.

A.I.R. 1938 Bom. 284.

A.I.R. 1940 Bom. 363.

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A.I.R. 1946 Bom. 510.

A.I.R. 1937 Bom. 198.

A.I.R. 1940 Nag. 377.

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tax, for, he merely accommodates a customer and though there may be nominally two transactions, substantially there is only one transaction and the goods are taxed only once [Section 2 (i)]. Again, exemption is granted in respect of articles refunded, for the articles may be sold again and they may be subject to tax [Section 2 (i)]. Further the same *transaction* is not to be taxed twice over both as purchase and as sale [Section 3 (5) proviso]. Similarly, certain goods which are subject to taxation under other enactments are exempt from taxation under this Act (Section 4).

ANALYTICAL STUDY OF THE TAXATION LAW

The Sales tax law of our Province which is designed to impose a general tax on the sale of goods falls into three convenient divisions.

Part I.—Liability to Tax, Exemptions and Modifications.

Part II.—Inter-relation of the Authorities and Dealers and licensees.

Part III.—Appellate and Revisional Tribunals under the Act.

I.—Liability to tax, Exemptions and Modifications

This subject can be considered under the following heads :—

- A. Practice and Procedure before original authorities.
- B. Registration.
- C. Assessment.
- D. Licensing.
- E. Notification.
- F. Rebate.

Practice.—Procedure and Stamp—Legal practitioners, Registered Accountants and Agents can appear for parties before registering, assessing and licensing authorities. Legal practitioners must file a vakalat stamped with Court fee stamp of Rupee one only. (Section II, Article 10-(a), C.F. Act) while Registered Accountants and agents must file duly stamped powers of attorney chargeable with duty of Rs. 1-8-0 (non-judicial stamp) (Schedule 1-A, Article 40, Stamp Act).

Petitions for adjournment must be stamped with Court fee stamp to the value of annas twelve only. [Schedule II, Article 1 (b), C.F. Act]

Power to conduct inquiry involves also power to adjourn in suitable cases. It is implicit in all tribunals conducting inquiry.¹ But there is no obligation that the order of adjournment should be communicated to the *absent* party by registered post. It is in fact the duty of the absent party to ascertain the adjourned date.

Particularly, when adjournment had been on a prior occasion applied for and granted, the party applying for further time must do so before the adjourned date and not on the hearing date.²

1. A.I.R. 1930 Mad. 113 (Case under Income-Tax Act)

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: 1. A.I.R. 1930 Mad. 113 (Case under Income-Tax Act)

2. A.I.R. 1937 P.C. 133 (Case under Income-Tax Act)

Registering, Assessing and Licensing authorities can grant certified copies of proceedings.³ The application for grant of copies must be stamped with Court fee stamp of annas two only under Schedule II, Article I, C. F. Act.

Relation of Registration, Assessment and Licensing

We will now consider in a general way the relation of Registration, Assessment, Licensing, Notification and Rebate provisions. We can clear the ground by referring to Section 4. Section 4 sets out goods which are *statutorily* excepted from the Act.

Leaving aside 'Registration' provision for one moment, it can be said that the operation of the entire taxing and licensing machinery is on turnover of a dealer of Rs. 10,000 and over. But the provision for Registration *mandatorily* applies to turnover of Rs. 7,500 and over, and at the *option* of the dealer even to turnovers of less than Rs. 7,500. So, while Assessment, Licensing, Notification and Rebate apply only to turnover of Rs. 10,000 and over, the provision for Registration is more comprehensive and is operative on turnovers of less than Rs. 10,000. So all assessable dealers, and all dealers to whom licensing notification, or rebate provisions apply are necessarily *registrable* dealers. But all *registrable* dealers are not persons on whom the taxing and other provisions operate, for registrable dealers include non-assessable dealers with marginal turnover.

The provision for general liability to tax a dealer with turnover of Rs. 10,000 and over, every time there is sale is set out in Section 3. Section 5 (*New*) sets out the goods in respect of which, if *licensed*, statutory modification of the tax in varying degrees is allowed, *e.g.*, total exemption, taxing at less points, reduction in rate, etc. Section 6 [*New*] sets out the power of Government to notify exemptions and reductions of tax in regard to specific goods, specific places, etc. Section 7 covers export of finished goods, and consequent grant of rebate of one half of the tax. Under Section 8 agents can be licensed and be exempted from tax. Section 6-A (*New*) makes statutory provision for the application of the residuary multiplied tax system (Section 3) where a licence obtainable has not been obtained or where the terms of a licence issued are contravened or where terms of Government's notification are contravened.

We will now consider Registration.

REGISTRATION

See SECTIONS 8-A, 8-B AND T. R. 5-A AND COMMENTARIES.

Authorities that Register.—The Assistant Commercial Tax Officer of the area in which the principal place of business is situate is the registering authority [T. R. 5-A (1)]. See Notification II.

³ A.I.R. 1940 Mad. 768. and A.I.R. 1937 Lah. 876. Cases under Income-Tax Act.

Form of Application.—See Section 8-A and commentaries—Forms A-6 and A-7.

Who can apply for Registration.—See Section 8-A and commentaries.

Form of Registration.—See Form A-8.

Cancellation.—See commentaries to Section 8-A.

Effect of failure to register, collecting tax in absence of registration, and withholding tax collected.—See Sections 8-B and 15 (e), (f), (g) and commentaries.

The next subject to be considered is Assessment which forms the third major head of discussion.

ASSESSMENT

[See SECTIONS 3 AND 9 COMMENTARIES.]

The *multi-pointed* tax system or taxation at all sales in the chain of sales which is the normal rule is set out in Section 3. The *one-pointed tax system* is only an exception. In respect of goods subject to single-pointed tax, the rest of the points in the chain of sales are exemption points. In other words, the goods are subject to one-pointed taxation system and *residual* exemption. Combined with the multi-pointed tax at the rate of 3 pies in the rupee, the present amended Section 3 provides also for the levy of an *additional one-pointed* luxury tax on specified goods at a particular stage in the chain of sales. In the subsequent points in the chain of sales, the luxury goods are exempt so far as the additional tax is concerned. But they are subject to the normal *multi-pointed* tax at the normal rate at all points in the chain of sales, like other goods.

In the case of certain goods, the exemption from tax is available at a few points in the chain of sales. In other words the goods are subject to *single-pointed* or *double-pointed exemption*. At other points or residual points in the chain of sales, the goods are subject to tax at the normal rate in the multi-pointed system.

The taxation system under this Act involves a consideration of four broad elements, *viz.*,

- (i) authorities that Act under this Act (Section 2-a (i), and Notification II)
- (ii) the persons on whom the tax machinery operates [Section 2 (b), Section 14-A, etc.]
- (iii) the basic requisites for the operation of the tax [2 (i), 2 (h), and 2 (c), turnover of sale of goods]
- (iv) Procedure for determining taxable turnover.

Let us examine the elements one by one.

(i) Assessing authorities

(See NOTIFICATION II AND T.R. 6)

DEALER	ASSESSING AUTHORITY.
1. Where a dealer's principal place of business (T.R. 6) is within a revenue taluk.	<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 10px;">{</div> <div> <p>If turnover is Rs. 20,000 and less, the A. C. T. O. of the area.</p> <p>If turnover is over Rs. 20,000, the Dy. C. T. O. of the area.</p> </div> </div>
2. Dealer carrying on business in more than one taluk within the same District.	Dy. C. T. O. having jurisdiction over area in which head office is situated.
3. Dealer carrying on business in more than one District with <i>headquarters</i> within Province.	Dy. C.T.O. having jurisdiction over place, where headquarters is situate.
4. Dealer carrying on business in some <i>Districts</i> with headquarters outside Province.	Dy. C.T.O. authorized by the Board of Revenue.

Under G.S.T.R. 17 (5), if after assessment is made by the A.C.T.O., turnover is added to make up for escaped assessment and the total is more than Rs. 20,000 the Dy. C.T.O. is the assessing authority.

Appointment of A.C.T.Os and Dy. C.T.Os.—See G.S.T.R. 3 (b) and (d).

(ii) Persons on whom the tax machinery operates

The following table sets out the classes of dealers under the Act :—

DEALER			
Strictly so called Section 2 (b)	Agent of non-residents Section 14-A	Contractor Section 2 (h) (i) and (ii) T.R. 4 (3)	Representative or constructive dealers [G.S.T.R. 19, 21, 22 and 23]

The tax is levied on all persons who carry on the business of buying or selling goods and the term 'person' has to be interpreted in a wide sense. Thus, individuals, joint families, co-operative societies, firms and companies doing the business of buying or selling goods

and contractors are within the purview of this measure. Similarly, agents doing business within the province are liable, though principals are resident outside the province.

Agents of non-resident principals.—See Section 14-A.

Representative Dealers.—See G.S.T.R. 19, 21, 22, 23.

(iii) **Basic requisites for Operation of the Tax system**

[See Sec. 2 (c), (h), (i)]

In the absence of sale, or of such sale relating to goods, or of such sale of goods being within the province, no turnover exists for purpose of taxation.

Since the Act taxes only 'sales', agreement to sell, mortgage, hypothecation, charge and pledge are outside the scope of the Act. But the Act specifically brings within its purview transfer on the hire-purchase system or sale on the instalment system. But a Works Contract is within the Act.

This Act applies only to sales within the Madras Province and when sales are effected outside the province, this Act does not apply.

(iv) **Procedure for determining taxable Turnover and Assessment**

(See also SECTION 9 COMMENTARIES)

Under the Amended Act, not only are taxes payable by dealers at differential rates as provided in Section 3 or 5 or as notified under Section 6, but the actual taxes paid must not be less than the taxes collected by dealers from their customers (Section 8-B). So the taxes payable are assessed as also the excess of amount withheld by the dealer from the Government in the shape of tax or taxes collected (Section 8-B).

Assessment of amount withheld

This is a simple matter. The total amounts collected by dealers from customers on scrutiny of accounts can be found out. After deducting from this sum the total amount of tax or taxes paid by the dealers to Government, the amount withheld can be easily calculated.

Assessment of Tax or Taxes

(A) **Reaching tax point.**—Assessment of tax depends on the taxable turnover, and the rate of tax. The taxable turnover and rates of tax vary with reference to the nature of the goods. Taxable turnover has to be determined with reference to the tax system applicable to particular goods, the exemption point applicable to the goods and the extent to which the exemption is unavailable under certain circumstances.

For instance, suppose A, B, C, and D are dealers. If furniture is sold by A to B, and then by B to C, and then by C to D, the same furniture is subject to *multi-pointed* tax system. In other words A, B, C,

and D are taxable. Every one of them is a *dealer* whose taxable turnover is the sale price so far as *his sale* is concerned. With reference to the goods in the chain of sales, all sales are *tax points*, and no sale is an exemption point. If, in the above illustration A sells a car to B, and if the *first dealer* A is liable to pay the additional *luxury tax* payable, then B, C, and D, the other dealers, are not taxable dealers so far as this *luxury tax* is concerned though they may sell the same car one after another. The turnover of taxable sale of B, C, and D so far as this additional tax is concerned is *nil*. Viewing the matter objectively the sales of car by B, C and D are exemption points in the chain of sales, the *single tax point* being the first sale by A. Similarly instead of dealing in car, suppose A is licensed and deals in bullion and specie or hides and skins or mill yarn. He sells to B who sells to C who in turn sells to D. In this illustration since the goods are subject to *one-pointed tax*, that dealer who is mentioned in the Turnover Rules as taxable is taxed, and the other dealers are exempt from tax. Generally the rules provide for the *first dealer* with taxable turnover being taxed. Viewing the matter from the angle of the goods, the sale by the taxable dealer (as provided in the rules) is the tax point and sales by the other dealers are exemption points. If in the above illustration a dealer is not licensed, the exemption is unavailable, and he becomes taxable. Similarly a low rate of tax may be charged in respect of certain goods if a dealer is licensed. If he is unlicensed the benefit of this reduced rate may be unavailable. So in assessing the tax or taxes with reference to the various goods the turnover must be determined with reference to tax points and exemption points. If as in some cases goods are subject to differential rates of tax the assessment can be calculated with reference to the two elements of turnover and rates of tax.

The position can be summed up thus :

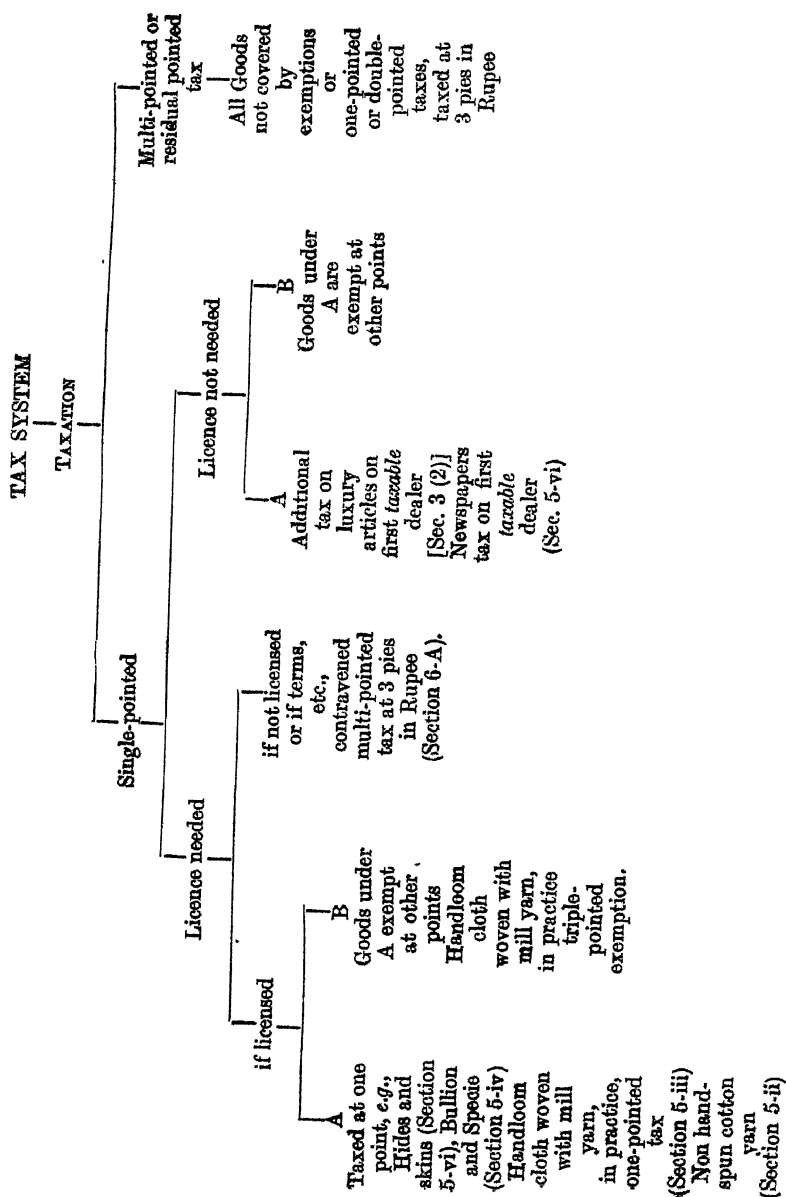
(a) In the case of goods taxed in the multi-pointed system all sales in the chain of sales are tax points and the turnover of *every dealer* seller or buyer is taxable (according to the scheme applicable) at the normal rate of 3 pies in the rupee. [Section 3 (1) and T.R. 4 and 5].

(b) In the case of specified luxury goods in respect of which an additional tax is levied, the *first dealer* with taxable turnover is taxable. All subsequent sales are not taxable. The first taxable dealer's sale is the tax point and subsequent sales are *exemption points* so far as this additional tax is concerned. The first dealer with taxable turnover alone is liable to pay the additional tax at the different rates specified [Sections 3 (2) and T. R. 4 (B) *New*.]

(c) In the case of goods falling under Section 5 or covered by notification under Section 6, subject to the *one-pointed tax* system, the rest of the points are exemption points in the chain of sales. Similarly there may be one or more *exemption points* in the chain of sales or purchases, the rest of the points being *taxation points*. Again there are also differential rates of tax. Tax is payable by the dealer

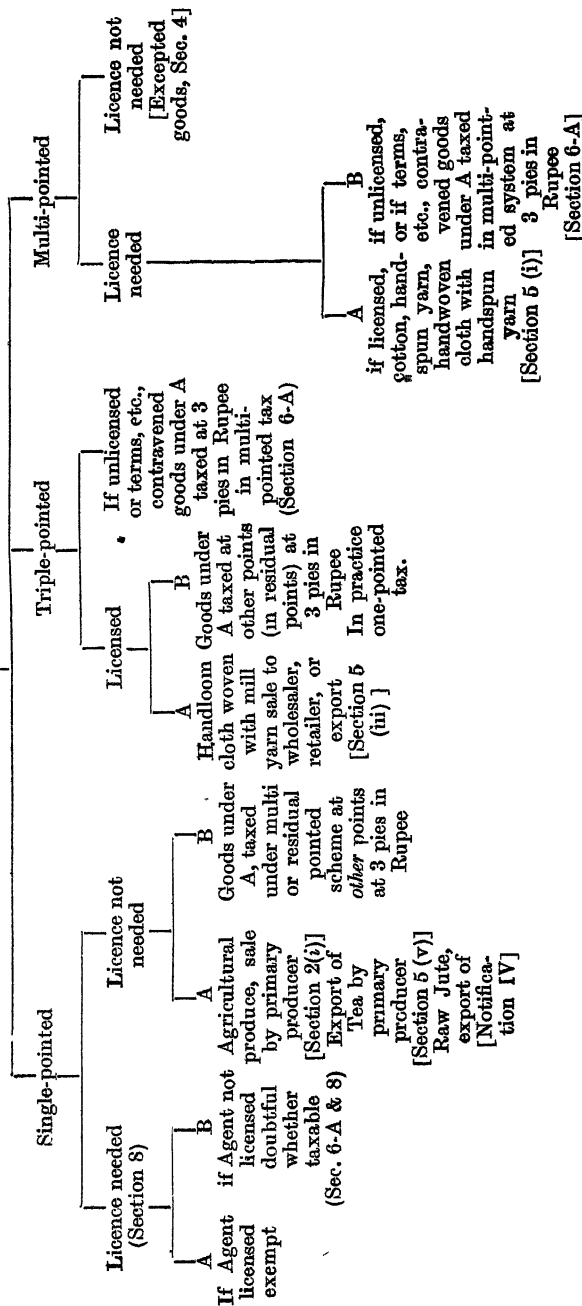
dealing in the goods at the *taxable* point of sale or non-exemption point as the case may be at the rate or rates specified in Section 5 or notified under Section 6 [T. R. 4-A]. As instances, take the case of non-handspun cotton yarn, bullion and specie, hides and skins, etc. All other points of sale in the chain of sales in respect of these goods are exemption points. So a dealer dealing in these goods in the subsequent or non-tax point of sales is not taxable.

(d) In cases falling under division (c) above, the exemption point may be the tax point, and the rate of the tax may be the normal rate of 3 pies in the rupee, and not the concessional rate allowed, and the goods may be thus assimilated to the *multi-pointed tax* system if licence is required to be taken by the statute (Section 5) or notification (under Section 6) and if such licence is not taken or if the conditions of licence or restrictions are contravened (Section 6-A and T. R. 4 and 5). The following tables illustrate the working of the tax system.



TAX SYSTEM

EXEMPTION



TAX SYSTEM

RATES

No tax and no rate

A
Licence not
needed. (Ex-
cepted Goods
Sec. 4)

B
If licensed
Cotton, hand-
spun yarn,
handwoven
cloth with
handspun
yarn.
[Sec. 5 (i)]

C
If unlicensed
or if terms
etc., contrave-
ned, taxed at
3 pies in
rupee at all
points (Sec.
6-A and
Sec. 3)

Reduced Rate

By notifi-
cation (Sec. 6)
1% in British
Cochin, at
points in
which 3 pies
in rupee is
normally
chargeable
(See Division
III.)

One Pointed

D
One quarter
of one per cent.
If licensed,
Bullion and
Specie on
first taxable
dealer. [Sec.
5 (iv)]
Half of one
per cent.
If licensed,
non-hand-spun
cotton yarn
on first tax-
able dealer.
[Sec. 5 (ii)]

E
If dealer not
licensed or if
terms, etc.,
contravened,
goods under
D taxed at
3 pies in
rupee at all
points (Sec.
6-A and
Sec. 3).

Normal rate of three
pies in rupee

At one point

Licence
needed. News-
papers taxed
on first tax-
able dealer
(Sec. 5 vi)

F

If licensed
I. Hides &
skins, [Sec.
5 (vi)]
II. Handloom
cloth with
millyarn at
stage of sale
to consumer
[Sec. 5 (iii)]

G
If dealer not
licensed or
if terms, etc.,
contravened,
goods under
F. I & II
taxed at all
points (Sec.
6-A and
Sec. 3)

Other than
one point

Non-exemp-
tion points
I. Tea and
Raw Jute at
stages other
than export
[Sec. 5 (v) and
Notification
in]
II. Goods
covered by
C.E.G. tax-
able at
all points.
[Sec. 3 and
Sec. 6-A]

All points
I. Goods
other than
A.B.D.F.
taxable at
all points.
II. Goods
covered by
C.E.G. tax-
able at
all points.
[Sec. 3 and
Sec. 6-A]

Additional high rate of
luxury tax

One pointed
on first tax-
able dealer.

Three pies in
rupee.
Radio and
wireless goods
Photographic
goods, Elec-
trical goods
Pen, Pencil
sets, etc.
Clocks, etc.
Six pies in
rupee. Motor
goods Re-
frigerators,
etc. [Sec. 3
(2)].

TABLE OF EXEMPTIONS

xxix

TAX SYSTEM

EXEMPTION

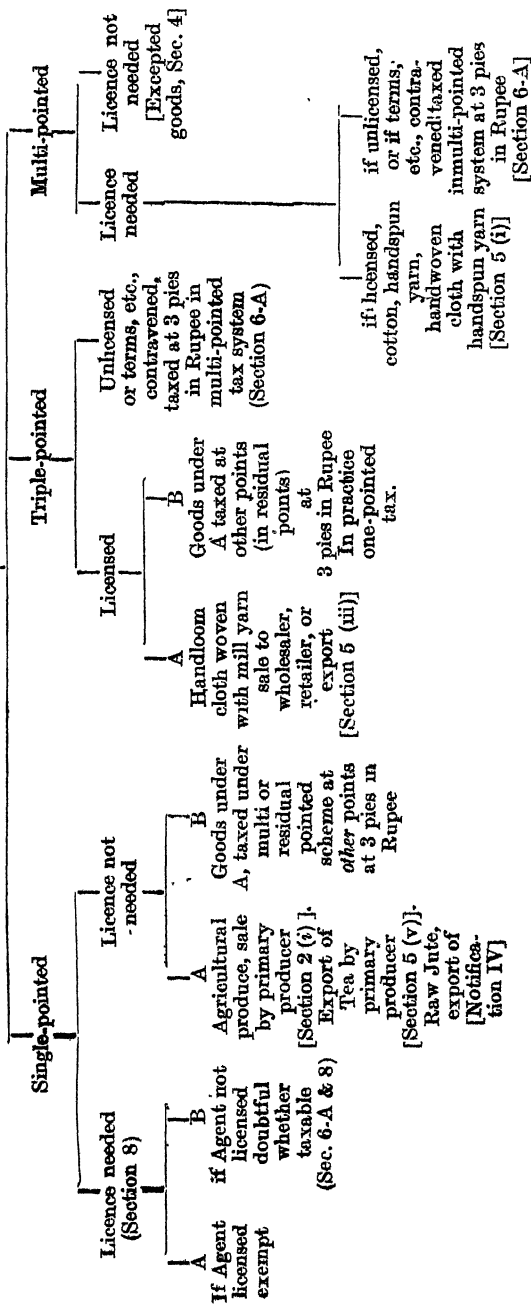
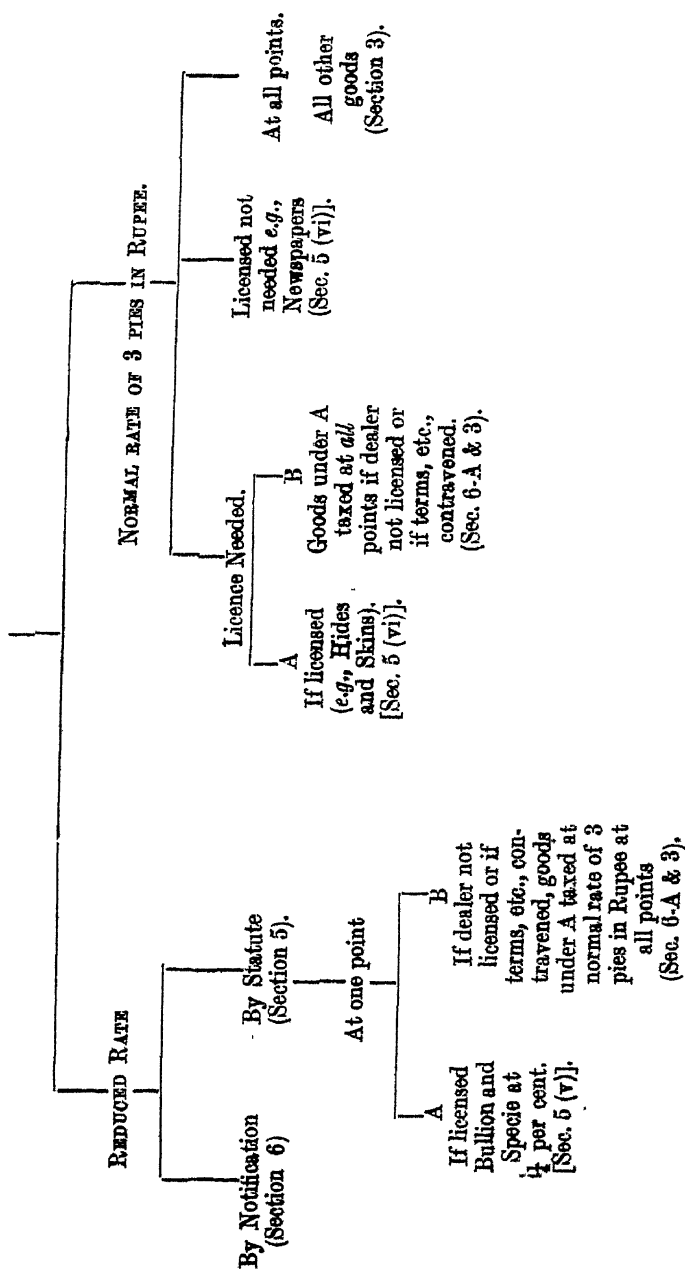


TABLE OF TAX RATES

TAX RATES



(B) Year of turnover.—After reaching the tax point, the year in respect of which the turnover has to be calculated should be considered.

The tax is leviable for a year on the net turnover for that very year. This is in actual practice difficult except in the case of monthly submission of returns for the previous month. So Section 3 (6) and rules framed under Section 3 provide for the framing of rules for determining turnover on a provisional basis on the previous year's turnover and levy and collection of tax or taxes on that basis and final checking up after the close of the year and consequential refund or collection of excess.

(C) Determination of gross turnover.—After reaching the tax points, the scheme of taxation (seller's or buyer's) must be applied with reference to the goods. *Generally* all goods are taxable in the seller's scheme and the total *sale* price is the gross turnover [T. R. 4 (1)] while in the case of *certain* goods like groundnut, cashew, etc., taxable in the buyer's scheme, the purchase price is the gross turnover [T. R. 4 (2)]. In the case of a works contract, deduction must be made for cost of labour, etc., as provided by notification issued under T. R. 4 (3) in order to arrive at the gross turnover.

(D) Determination of net turnover.—The net turnover must then be determined. To reach the net turnover certain deductions permitted by the Act (Sections 4 and 5) and the rules framed under Section 3 have to be made representing the value of discount [T. R. 5 (1) (a)], refund [T. R. 5 (1), (b)], accommodation sales [T. R. 5 (1) (c)], excepted and exempt *articles* [T. R. 5 (1) (d) (e)], exempt transactions [T. R. 5 (1) (f)], freight charges [T. R. 5 (1) (g)] and duty paid to Central Government [T. R. 5 (1) (i)]. See also T. R. 5 (1) (j) and (k).

(E) Submission of returns.—As turnover is normally the basis for the levy of tax and as normally the dealer's accounts would show the total turnover, provision is made for submission of returns of turnover by dealers with reference to their accounts, and for checking them by the department. Provision is also made for assessing in the absence of return or where return is unreliable [See below]. In view of the amendments to the Act in 1947 provision is made in rules for returns showing the total taxes collected by dealers.

We now proceed to set out some general rules applicable to all returns.

(1) Return has to be submitted only where the actual turnover with reference to previous year or the anticipated net turnover is Rs. 10,000 or over [See 9, T. R. 6, 11, 13, 15].

(2) Return has to be submitted only to the assessing of the area in which the principal place of business is situated. [T. R. 6 (1), (2), (3), 11 (1).]

(3) Where a firm has branches the *aggregate return* has to be submitted by the head office (including the turnover of branches)

to the assessing authority (Deputy Commercial Tax Officer) of the area in which the head office is situate. Each branch office must also submit a return [See T. R. 5 (2) See also Section 2 a-1 and Notification II].

(4) Except in the case of hides and skins all returns must show both gross and net turnover [T. R. 6 (1), (2), (3), 11 (1), 13 (2)], (total turnover and turnover after deductions).

(5) [New] The return (final or monthly) must disclose also the tax or taxes collected by the dealer from his customers [T. R. 11; 13 (1), (2).]

(6) Where goods are exchanged the value and quantity of goods must be specified in the return [Section 2 (b) T. R. 17].

Secondly, some special rules relating to submission of returns may be considered. There are two systems of assessment annual and monthly, and there are special provisions relating to submission of return in the two systems.

Two Systems of Submission of Return and Assessment

There are broadly two modes of assessments one annual which is general and the other monthly. The former applies to all dealers generally. The latter applies to dealers in hides and skins, and to other dealers having a turnover of Rs. 20,000, if they choose to adopt it.

(a) Annual and Monthly Systems

The Turnover and Assessment rules (6 to 14) fall into six convenient divisions. The first stage is the initial submission of returns in Forms A or A-I (Rule 6) [See Table]. The second stage is reached in the rules relating to *provisional* assessment of taxes (Rules 7 to 9). Issue of demand notice in Form A2 and payment of tax or taxes provisionally assessed constitute the third stage (Rule 10). Rule 11 provides firstly for *final* submission of returns in Form A including in such return the tax or taxes collected from customers, and secondly for final assessment of tax or taxes payable (under Section 3 or 5 or by notification under Section 6) and the amount withheld (Section 8-B) the latter amount being a portion of the tax or taxes collected by dealers from customers. Incidentally the final return submitted is the basis of the provisional assessment for the subsequent year. Rule 12 and Rule 5-A (9) provide on final check up for the issue of notice for (i) payment of *additional* tax or taxes as finally assessed (Form B), (ii) the refund of excess of tax or taxes provisionally collected (Form C) and (iii) payment of amount withheld (Form B-2).

Turnover Rule 13 provides for an alternative system of monthly submission of returns by dealers for the preceding month mentioning also the tax or taxes collected from customers [Form A-3] and simultaneous payment,

(b) Some General Rules relating to assessment of taxes

Some provisions relating to assessment as applied to (a) Annual system, (b) Monthly system generally, and (c) Hides and skins are as hereunder :—

When return is submitted (whether provisional or final or monthly) which is correct and complete the assessing authority *shall* assess on the basis of the return. But the assessing authority has to satisfy himself that the return is correct and complete. [See Section 9 (2).] To satisfy himself, the assessing authority *may* (i) call for accounts and scrutinise them, and (ii) may make such enquiry as he considers necessary and then assess the tax or taxes and in the case of final assessment assess also the amounts withheld [T. R. 7, 11 (2), 13 (3), 15 (3)].

If the return is incorrect or incomplete, the assessing authority *shall* issue notice to the dealer to prove the correctness and completeness of the return by production of accounts [Section 9 and T. R. 9, 11 (3), 13 (4), 15 (4)]. The assessing authority may scrutinise the accounts and make such inquiry as he considers necessary and then assess to the best of his judgment [Turnover Rules 8, 11 (3), 13 (4), 15 (4)]. If turnover is determined at a figure different from what is shown in the return, reasons have to be recorded [T. R. 14].

If no return is submitted, the assessing authority shall make inquiries and determine the turnover, and assess *the tax* or taxes to the best of his judgment [T. R. 8, 11 (3), 13 (3), 15 (4)].

In the case of hides and skins and in the monthly submission of return and payment system, the assessing authority can assess to the best of his judgment, not only where no return is submitted or where return submitted is incorrect or incomplete, but also where the return is not accompanied by payment of monthly tax or taxes collected from customers [T. R. 13 (4) and T. R. 15 (4)]. It may be mentioned that, instead of the cumbrous procedure of provisional and final assessment, Rule 15 applies the monthly system to dealers in hides and skins.

Before we close discussion of the subject of assessment, a few words about the relation of Government and Dealers is necessary.

(c) Dealers and Government

In the chain of sales and collection of taxes, the relation of the various dealers and Government can be indicated as follows :—

Suppose A, B and C are dealers selling one after another certain furniture (taxable on the seller's scheme). If A sells to B the furniture for Rs. 100, he is entitled to collect tax at 3 pies in the rupee from the buyer B and the sale price and sales turnover of the furniture so far as A is concerned is Rs. 101-9-0. Suppose B sells the same

furniture to C for Rs. 120, he can collect from his buyer C sales tax of Rs. 1-14-0. So the sale price and sales turnover of B so far as the furniture is concerned is Rs. 121-14-0 while his purchase turnover is only Rs. 101-9-0. The Government is entitled to collect from A Rs. 1-9-0 and from B Rs. 1-14-0. If the aforesaid dealers deal in goods which are taxed on the buyer's scheme, the buyers B and C must pay tax each on his turnover of *purchase*. The same principle applies to collection of luxury tax. The seller is entitled to collect luxury tax from his purchaser, but the former must pay the tax so collected to Government.

We have considered Assessment. Let us close the discussion of this branch of subject with two tables.

TABLE—ANNUAL SYSTEM

xxxv

TABLE

ANNUAL SYSTEM

Who should Submit Return	Form of Return	Last day of Return and period of Return	To whom return to be submitted		Effect of failure to submit
			(3)	(4)	
(1)	(2)	(3)	(4)	(5)	
(1) New business after 1-10-1939 with <i>anticipated</i> net turnover of Rs. 10,000 and over [T.R. 6 (1)] [Provisional.]	A-1	30 days from commencement ..	A.C.T.O. if turnover is Rs. 20,000 and less. Dy. C.T.O. if turnover is more than Rs. 20,000.	Office under Section 15 (a)	
(2) Do. [T.R. 11 (1) Final]	A	1st May for year preceding ..	Do. ..	Do.	
(3) New Business after 1-10-1939 with turnover reaching Rs. 10,000 and over [T.R. 6 (2) Provisional]	A-1	30 days of reaching limit ..	Do. ..	Do.	
(4) Do. [T.R. 11 (1) Final]	A	1st May for year preceding ..	Do. ..	Do.	
(5) Old business getting taxable, net turnover in any Year being Rs. 10,000 and over [T.R. 11 (1) Para 2]	A	1st May for year preceding ..	Do. ..	Do.	

TABLE - MONTHLY SYSTEM

TABLE

MONTHLY SYSTEM

[OPTIONAL MONTHLY SYSTEM]

[*Optional for goods with turnover exceeding Rs. 20,000—Intimation of option of being governed by the Monthly System needed*]

Who should submit Return	Form of Return	Last day of Return and period of Return	To whom return to be submitted	Effect of failure to submit
(1)	(2)	(3)	(4)	(5)
(1) Turnover exceeding Rs. 20,000 [T.R. 13 (2)].	A-3	Last day of every month for preceding month.	Dy. C.T.O.	Offence under Section 15 (a)

HIDES AND SKINS

[MANDATORY MONTHLY SYSTEM]

(2) Existing business with actual or anticipated turnover of Rs. 10,000 and over [T.R. 15].	A-4 and A-5	Last day of every month for preceding month.	A. C.T.O. if turnover is Rs. 20,000 and less, and Dy. C.T.O. if turnover is more than Rs. 20,000.	Offence under Section 15 (a)
(3) New business with anticipated turnover of Rs. 10,000 and over [T.R. 15].	A-4 and A-5.	Last day of month following that in which business commenced and thereafter last day of every month for preceding month.	Do.	Do.

The fourth branch of subject for discussion relates to Licences.

LICENSING.

(SECTIONS 5 AND 8)

[N.B.—All relevant rules are noticed]

Scope of licensing provisions.—The object of the provisions is to allow some concession to persons and transactions, *otherwise taxable*, (Sections 5 and 8). Where total turnover (anticipated) is less than Rs. 10,000 the taxation provisions do not apply, and the licensing provisions also do not apply. (See use of words *tax*, *taxation* in Sections 5 and 8 and '*avail of exemption*' in G.S.T.R. 5 (i) and '*benefit*' in G.S.T.R. 7).

Absence of licence.—Effect, see Sections 5, 6-A and G.S.T.R. 7.

Where licence is required but is not taken, the benefit of Section 5 or Section 8 is not available.

Licensing Authorities.—Where the dealer deals in goods in respect of which tax or taxes are payable under Sections 3, 5 or as modified under notification (Section 6), the assessing authority of the area in which the principal place of business of the licensee is situated is the licensing authority (see above '*Assessment*' as to who are assessing authorities). In other words where tax is payable to any extent, the A.C.T.O. is the licensing authority if the turnover is Rs. 20,000 and less and the Dy. C. T. O. is the licensing authority where the turnover exceeds Rs. 20,000 [G.S.T.R. 5 2 (a)].

Where no tax at all is payable, as, for instance, where a dealer deals *exclusively* in goods totally exempt from tax (like cotton handspun yarn, and handloom cloth woven with handspun yarn) the A.C.T.O. is the licensing authority *whatever* be the turnover [G.S.T.R. 5 2 (b)].

If however a dealer deals in exempt goods and unexempt or partially taxed goods, the A.C.T.O. or Dy. C.T.O. are licensing authorities according as the turnover is below or above Rs. 20,000 [G.S.T.R. 5 (2) (a)].

Application, form and duration.—Application must be in Form I [G.S.T.R. 5 (1) and G.S.T.R. 6 (2)] and must be made before 30th April [G.S.T.R. 6 (2)], though if application is made later, licence is issuable from the date of receipt of application unless penalty licence is issued (see below) with retrospective effect (G.S.T.R. 6 (3)). All licences are annual and expire on 31st March following [G.S.T.R. 6 (1) (3)] the grant of licence. A licence issued shall cover business also in the shandies within the taluk, if such shandies are entered in the licence. [G.S.T.R. 6 (1-A)]. But, in all other cases, licences must be applied for in respect of each of the places of business including branches [G.S.T.R. 5 and 6 (1)].

Stamp.—Applications for grant of or for renewal of licences, applications by transferees and applications for duplicate licences need not be stamped (see Notification vi)

Who should apply.—(See SECTION 5)

Generally a dealer in the following goods specified in G.S.T.R. 5 (1) must apply :—(a) Cotton or non-handspun cotton yarn or handspun yarn, (b) cloth woven on handlooms with handspun yarn, (c) cloth woven wholly or partly with mill yarn, (d) bullion or specie, (e) hides and skins. Certain other goods like newspapers etc., are specified in Section 5, but no licence is needed. Agents of resident principals have to take out licence

Where there is more than one place of business instructions have been issued by Government permitting the head office to apply for licence. (Press communique)

Licences are of two kinds :—*Free Licences* and *Fee Licences*.

Free licences.—For grant or renewal of licence for dealing exclusively in handloom cloth wholly woven with handspun yarn no fee is payable [G.S.T.R. 6 (4) (b)].

Fee Licences.—Fee payable (see Table below). Fee payable has been enhanced from 1st April 1948. Up to 31st March 1948, free licence was grantable in respect of handloom cloth woven partly or wholly with mill yarn. But the concession is unavailable from 1st April 1948.

Provisional determination of fee.—If information furnished in the application is, to the satisfaction of the licensing authority, correct and complete, and if correct fee is paid as per scale fixed (see table for fees) licence is granted. If (1) the information is not correct or complete, or (2) if the correct fee is not paid, notice will issue to the licensee to prove the correctness and completeness of information. The licensing authority will then provisionally determine the fee to the best of judgment [(G.S.T.R. 6 (5))].

Final assessment of licence fee.—If returns are submitted, the licensing authority may scrutinise them as also accounts, etc., and make inquiries. If he is satisfied about its correctness and completeness, licence fee will be assessed on the basis of return.

If (1) returns are not submitted or (2) if returns appear incomplete or incorrect, the licensing authority must give an opportunity to the licensee to prove the correctness and completeness of the return and then assess the licence fee [(G.S.T.R. 6 (11))].

Refund or Collection of excess fee.—After the final assessment, if excess licence fee had been collected on provisional basis, the excess will be refunded. If additional fee is payable the deficit will be collected after the issue of demand notice [(G.S.T.R. 6 (11))].

If turnover is found to be less than Rs. 10,000 there is no provision for refund of the minimum fee already collected.

Penalty licence.—In deserving cases the District Commercial Tax Officer may direct the licensing authority to grant licence with retrospective effect on paying penalty [G.S.T.R. 6 (3)]. But such licence can be granted only for the current year and not for the previous year.

Penalty licence fee.—See Table below :

General conditions.—Licence is personal [G.S.T.R. 6 (6)]. If lost a duplicate licence is obtainable [G.S.T.R. 6 (8)] on payment of a fee of Rupee one. Transferee of business can obtain a free licence for the unexpired year [G.S.T.R. 6 (7)]. Licence covers not only the fixed place of business but shandies in the neighbourhood [G.S.T.R. 6 (1-A)].

Non-payment of licence fee, Effect.—To claim the benefit of Section 5 and 8, full fee determined must be paid. Otherwise the benefit is unavailable and the licensee will be taxed if otherwise taxable. (See Sections 8 and 6-A). Under the Amended Act, non-payment of licence fee is an offence [Sec. 15 (a)].

Returns by licensees.—Returns have to be submitted to the *licensing authority* concerned of the place in which principal place of business of the licensee is situate.

Where there is more than one place of business, returns may be submitted by the head office in respect of branches or subordinate offices also

Form of return.—See Table below :

Separate Accounts.—See G.S.T.R. 11 and 12 and Section 5, 6, 8 Commentaries and Forms X and XI.

Absence of separate accounts.—See Section 6-A Commentaries.

Licences before 31-12-1947.—Licences issued before 1-1-1948 continue to be operative subject to Notifications if any, under Section 6 [G.S.T.R. 6 (12)].

Cancellation and suspension.—There is no provision for suspension of licence, but for breach of conditions of licence, cancellation of licence is permissible [G.S.T.R. 8] :

Escaped licence fee and Rectification.—See G.S.T.R. 17, and G.S.T.R. 18.

The following table about the application of the licensing provisions in force on 1st April 1948 will be found to be useful :—

TABLE—LICENCES

LICENCES.

	Bullion and Specie [Section 5 (iv)]	Cotton, non- handspun and Handspun yarn [Section 5 (i) and (ii)]	Handloom cloth woven wholly with Handspun yarn [Section 5 (i)]	Handloom cloth woven with mill yarn, partly or wholly [Section 5 (ii)]	Hides and Skins [Section 5 (vi)]	Agent [Section 8]
	(i)	(ii)	(iii)	(iv)	(v)	(vi)
I. Fee (annual)—						
(i) If anticipated net turnover is Rs. 20,000 and less.	Rs. 75	Rs. 75	Free	Rs. 25	Rs. 25	Rs. 100
(ii) If anticipated net turnover exceeds Rs. 20,000 but does not exceed Rs. 1,00,000 [G.S.T.R. 6 (4)].	Rs. 150	Rs. 150	Free	Rs. 50	Rs. 50	Rs. 200
(iii) For every additional turnover of one lakh or fraction thereof.	Rs. 100	Rs. 100	Free	Rs. 100	Rs. 100	Rs. 100
(iv) Maximum fee leviable.	Rs. 1,000	Rs. 1,000	Free	Rs. 1,000	Rs. 1,000	Rs. 1,000
II. Penalty licence fee [G.S.T.R. 6 (3)].	Licence fee <i>plus</i> penalty not exceeding nine times the fee as determined by C.T.O.	Licence fee <i>plus</i> penalty not exceeding nine times the fee as determined by C.T.O.	Upto Rs. 50 as determined by C.T.O.	Licence fee <i>plus</i> penalty not exceeding nine times the fee as determined by C.T.O.	Licence fee <i>plus</i> penalty not exceeding nine times the fee as determined by C.T.O.	Licence fee <i>plus</i> penalty not exceeding nine times the fee as determined by C.T.O.

	I	II		I	III		I	III		I	IV		V
III. Form of Application [G.S.T. R. 5 (1)].													
IV. Form of licence [G.S.T.R. 6 (5)].													
V. Returns by licensees —													
(A) If dealing exclusively in goods under Section 5 [G. S. T. R. 6(10)]	I	II	VII 20th June for preceding year	VII 20th June for preceding year	III	VII 20th June for preceding year	I	III	VII 20th June for preceding year	IV	See below Do.	See below Do.	V
(B) If dealing in Goods falling under Section 5 and other goods. 11 Annual			A and A-1 1st May For preceding year	A and A-1 1st May For preceding year		A and A-1 1st May For preceding year			A and A-1 1st May For preceding year		See below Do. Do.	See below Do. Do.	
(i) T.R. 6, 11			A-3 Last day of month For preceding month	A-3 Last day of month For preceding month		A-3 Last day of month For preceding month			A-3 Last day of month For preceding month		See below Do. Do.	See below Do. Do.	
(ii) T. R. 13 monthly			A-3 Last day of month For preceding month	A-3 Last day of month For preceding month		A-3 Last day of month For preceding month			A-3 Last day of month For preceding month		See below Do. Do.	See below Do. Do.	

LICENCES—(contd.).

	Bullion and Specie [Section 5 (iv)]	Cotton, non- handspun cotton yarn and Handspun yarn [Section 5 (i) and (ii)]	Handloom cloth woven wholly with Handspun yarn [Section 5 (i)]	Handloom cloth woven with mill yarn, partly or wholly [Section 5 (iii)]	Hides and Skins [Section 5 (vi)]	Agent [Section 8]
	(i)	(ii)	(iii)	(iv)	(v)	(vi)
V. Returns by licensees—(contd.).						
(C) In all cases of licence under Section 8 [G.S.T.R. 6 (9)]	Form of, Last day of sending, period of	..	..	..	..	VI 1st May For preceding year.
(D) In all cases of Hides and Skins [T.R. 15 (2)].	Form of, Last day of sending, period of	..	..	..	A-4 and A-5 Last day of every month For preceding month	..
VI. Failure to submit return ..	Offence under Section 15 (a)	Offence under Section 15 (a)	Offence under Section 15 (a)	Offence under Section 15 (a)	Offence under Section 15 (a)	Offence under Section 15 (a)
VII. Special Forms of account if any	..	..	..	..	..	X and XI

NOTIFICATION—(See SECTION 6)

REBATE—(See SECTION 7)

Hitherto we have discussed the operation of the Registration, Taxation and Licensing provisions. We will now discuss the relation of the authorities on the one hand and the Dealers and Licensees on the other.

II. INTER-RELATION OF AUTHORITIES AND DEALERS AND LICENSEES

Dealers and Licensees

This part can be considered under two heads.

- (i) Powers and duties of registering, assessing, licensing, and other (original) authorities. (For Powers and Duties of Appellate and Revisional authorities," see next heading under "*Appellate and Revisional Tribunals under the Act.*")
- (ii) Duties of Dealers and Licensees and concessions available.

(1) POWERS AND DUTIES OF AUTHORITIES

(A) Registering Authority.—[*New*], (See Sections 8-A and 8-B and Commentaries). (The Assistant Commercial tax officer is the Registering Authority).

The Authority

(1) must receive application for registration from dealers (compulsorily or optionally registrable) and register. [T.R. 5-A (5) and Section 8-A, Form A-6, A-7, A-8.]

(2) must prosecute dealers compulsorily registrable but failing to apply for registration (with turnover of Rs. 7,500 and over). [Sec. 15 (e)].

(3) must prosecute dealer if he (registered dealer) collects taxes in contravention of Section 8-B (1) and T.R. 5-A 7 (i). [Sec. 15 (f)].

(4) must issue notice in Form B-2 to dealer from Government, if he (registered dealer) has collected more from customers and paid less to Government, [T.R. 5-A (9)].

(5) must prosecute dealer if he (such registered dealer) mentioned above (4) fails to pay the amount withheld within the specified time [Section 15 (g)].

(6) may collect the amount withheld as arrear of land revenue [Section 8-B (2)].

(7) may call for accounts from registered dealers to satisfy himself that taxes collected from customers have been paid. [T.R. 5-A (8)].

(8) must exercise power in (7) above before the end of the year subsequent to collection of taxes from customers by dealers [T.R. 5-A (8) proviso].

(9) must apply all the above provisions to agents of non-resident principals [Sec. 14-A].

(B) Assessing Authorities.—A.C.T.O. and Dy. C.T.O. are the authorities.

They—

(1) must fix the money value of consideration in exchange transaction [T.R. 17].

(2) must fix the value of turnover in sale of goods implicit in works contract, in terms of Board's notification [T.R. 4 (3) *New*].

(3) must scrutinise returns submitted as also accounts.

(4) must assess the excess amount collected by dealers and withheld from Government and issue notice in Form B-2. [T.R. 5-A (9) and Section 8-B].

(5) may collect such withheld amount as arrear of land revenue [Section 8-B (2) *New*].

(6) must prosecute dealer for non-payment of withheld amount within time specified in Form B-2 [Section 15 (g)].

(7) must assess tax or taxes payable under Sections 3, 5 or notification under Section 6 on the basis of return if such return is correct and complete (provisional and final). [T. R. 7, 11, 13, 15 and Section 9].

(8) must, if return is incorrect or incomplete, give an opportunity to dealer to prove the return to be correct and complete [T.R. 9, 11, 13 and 15 and Section 9].

(9) must consider the evidence adduced to prove the correctness and completeness of the return [T.R. 9, 11, 13 and 15 and Section 9].

(10) may summon documents or require appearance of any person if necessary [G.S.T.R. 26].

(11) may utilise all the powers if necessary to enforce attendance of person or production of document summoned [G.S.T.R. 25].

(12) may examine on oath or affirmation any person [G.S.T.R. 24].

(13) may require dealers to produce accounts and documents [Section 14 and Notification II].

(14) may require dealers to furnish information about business [Section 14 and Notification II].

(15) may enter shop, godowns, offices, etc. and inspect registers, accounts, goods, etc. [Section 14 and Notification II].

(16) may make inquiries [T.R. 7, 11, 13 and 15].

(17) must in suitable cases assess to best of judgment provisionally and finally dealers governed by annual system, and assess

monthly dealers governed by the monthly system, to tax or taxes payable under sections 3, 5 or notification under section 6. [T.R. 7, 8, 11 (3), 13 (3), 15 (4)].

(18) must in collecting provisional tax round off amount by omitting annas and pies [T.R. 12-A *New*].

(19) must allow in suitable cases the benefit of exemptions, deductions and lower rate of tax. [T.R. 4-A, 4-B, T.R. 5 (1), Sections 5, 6, 8].

(20) must register dealers in ground-nuts if registration is sought and allow deduction. [G.S.T.R. 18].

(21) must, if dealer is disentitled to benefit of exemptions or modifications, deny benefit of exemptions and modifications and assess dealer in residuary tax scheme [T.R. 5, G.S.T.R. 7, Section 6-A].

(22) must record reasons, where the amount of turnover determined is different from the one submitted by dealer [T.R. 14].

(23) must furnish assessee with a copy of order recording reasons in case (22) above [T.R. 14].

(24) must on final assessment collect excess of tax or taxes payable or refund excess collected or adjust [T.R. 12, 13 (5), 15 (5)].

(25) must collect also the amounts withheld after issuing notice in Form B-2 [Section 8-B, G.S.T.R. 5-A (9)]. [*New*]

(26) must collect tax or taxes from partners, legal representatives, managers, etc. [G.S.T.R. 19—23].

(27) must give effect to appellate or revisional order and on the basis of such order collect excess payable or refund excess collected [G.S.T.R. 15].

(28) must exercise powers of assessing authority on transfer of papers [G.S.T.R. 16 and 17 (5)].

(29) must in case of escaped assessment issue notice and assess [G.S.T.R. 17].

(30) must rectify mistake in assessment after serving notice [G.S.T.R. 18].

(31) must allow rebate and refund half of the tax if refund is allowable [Section 7 and G.S.T.R. 9 and 10].

(32) must prosecute offenders committing breach of Act and rules [G.S.T.R. 32 and Section 15].

(33) may compound offences, if compounding is desired by dealer [Section 16 and G.S.T.R. 29].

(34) must keep matters confidential [G.S.T.R. 30].

(35) must treat agents of non-residents as dealers and apply relevant provisions [Sec. 14-A *New*].

(c) **Licensing Authorities.**—A.C.T.O. and Dy. C.T.O. are licensing authorities.

They

(1) must receive applications for licence with necessary fee [G.S.T.R. 5 and 6].

(2) must issue licence to applicant—

(a) straightway if satisfied that information is correct and complete [G.S.T.R. 6 (5)]

or

(b) if not so satisfied follow the procedure set out below—

(i) issue notice to applicant to prove the correctness and completeness of information [G.S.T.R. 6 (5)].

(ii) make inquiries.

(iii) give opportunity to applicant to prove correctness of information.

and

(iv) provisionally assess licence fee to best of judgment on receiving fee [G.S.T.R. 6 (5)].

(3) must finally assess licence fee by proceeding as hereunder :—

(a) scrutinise returns by licensees,

(b) scrutinise accounts,

(c) make enquiries [G.S.T.R. 6 (11)],

(d) give opportunity to licensee to prove correctness and completeness of return and

(e) consider evidence adduced and then assess the licence fee finally [G.S.T.R. 6 (11)].

(4) must collect balance of licence fee payable or refund excess of licence fee collected on final check up [G.S.T.R. 6 (11)].

(5) must allow exemptions modifications and benefit of Section 5, 8, etc, if conditions are complied and if licence fee has been paid and if such benefit is not allowable, assess the licensee to tax or taxes under residuary tax scheme [T.R. 5, G.S.T.R. 6 (11) (d), 7. Sections 4, 5, 6, 8].

(6) may grant penalty licence in suitable cases [G.S.T.R. 6 (3)].

(7) may issue duplicate licence if licence is lost and issue free licence to transferee in case of transfer [G.S.T.R. 6 (7) and (8)].

(8) must exercise also powers mentioned in list B as items 10 to 15, and 29, 30 and 31 (so far as they can be applied to licences as well) and items 32 to 34 under heading "*Assessing Authorities*".

(d) **Other Officers**—Power of inspection under Section 14 is exercisable also by

(i) Revenue officers not lower than Revenue Inspectors.

(ii) Excise and Police officers not lower than Sub-Inspector (Notification II).

Having considered the duties and powers of authorities we pass on to consider the duties of dealers and licensees.

DUTIES OF DEALERS AND LICENSEES AND CONCESSIONS AVAILABLE.

(A) Relating to Registration.— [New]

Dealers including licensees must	Effect of Failure
(1) within 30 days of reaching the limit of Rs. 7,500 apply for registration [Section 8-A (1) and T.R. 5-A (1)].	Offences under Section 15 (e).
(2) for the year 1947-48 register before 1st February 1948 [T.R. 5-A (1)].	....
(3) not collect taxes if unregistered [Sec. 8-B (1)].	Offence under Section 15 (f).
(4) not collect taxes from customers at higher rates than tax rates [T.R. 5-A (1)].	Offence under Section 15 (f).
(5) pay the taxes collected from customers [T.R. 5-A (7) (ii)].	....
(6) submit accounts if called [T.R. 5-A (8)].	....
(7) pay amount withheld within time specified in notice Form B-2 [T.R. 5-A (9)] and Section 8-B (2).	Offence under Section 15 (g).
(8) continue to pay registration fee till cancellation [T.R. 5-A (6)].	Offence under Section 15 (b) and (d).

(B) Dealers and Licensees [General]

They—	Effect of Failure
(1) must produce accounts when called (Section 14 and G.S.T.R. 25 to 27).	
(2) must furnish information (Section 14) .	....
(3) must be prepared to be examined on oath by authorities (G.S.T.R. 24).	....
(4) must allow entry of office into godowns, offices, etc., for inspection (Section 14).	Prevention or obstruction punishable under Section 15 (c).
(5) may appeal if aggrieved by any original order including assessment, and prefer revision within 6 months (Sections 11, 12 and G.S.T.R. 13 & 14).	....

(6) may compound offences (Section 16 and G.S.T.R. 29).		On failure offences punishable under Sec. 15 and G.S.T.R. 32.
(7) must maintain accounts in regional language [Section 13].		....
(8) must show in accounts the value of goods bought and sold [Section 13].		....
(9) must if dealing in luxury goods show separately goods of each kind [Section 13].		....
(10) must preserve vouchers, etc. [G.S.T.R. 11].		failure punishable under G.S.T.R. 32.
(11) must serially number separately vouchers of each kind [G.S.T.R. 11].		Do.
(12) must if he is a—		
(i) dealer dealing in goods under Section 3 and goods under Section 4 or 5 or notified under Section 6—maintain [G.S.T.R. 11]	separate accounts	failure punishable under G.S.T.R. 32.
(ii) licensee under Section 8 and		
(a) dealing also in goods under Section 3 maintain	separate accounts	Do.
(b) dealing also in goods under Section 4 and 5 maintain	Do.	Do.
(c) dealing also otherwise than for agreed commission maintain	separate accounts.	failure punishable under G.S.T.R. 32.
(d) maintain accounts also in [G.S.T.R. 12].	forms X or XI. [New]	Do.
(iii) dealer in hides and skins must maintain [G.S.T.R. 12].	separate accounts for goods tanned in the Province or outside.	Do.
(iv) dealer or licensee dealing in goods subject to differential rates of tax maintain [G.S.T.R. 12].	separate accounts for different kinds of goods.	Do.

DUTIES OF DEALERS

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(13) on entering into partnership report to assessing authority within 30 days [G.S.T.R. 19].	Failure punishable under G.S.T.R. 32.
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(14) on dissolution of partnership report to authority [G.S.T.R. 20].	Do.
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(15) on discontinuance of partnership report [G.S.T.R. 21].	Do.
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(C) Dealers must—

(1) submit true returns of gross and net turnover within time allowed and including in final return taxes collected from customers ¹ [T.R. 5, 6, 11, 13, 15].	Wilful submission of untrue return, failure to submit return punishable [Section 15 (a)].
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(2) include turnover of branches in total turnover [T.R. 5 (2)].
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(3) state in return value of goods exchanged [T.R. 17].
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(4) produce accounts and other documents to prove correctness and completeness of return [(T.R. 9, 11, 13 and 15].
--	------	------

(5) must pay taxes assessed at prescribed rates within time allowed (provisional, final, monthly) [T.R. 10, 12, 13, 15].		Failure or fraudulent evasion punishable under Sec. 15 (b) and (d).
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(6) may in paying provisional tax round off by omitting annas and pies [T.R. 12-A (new)].	...	
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(7) must pay taxes even in respect of goods under Section 5 at rates fixed in Section 3 if conditions or restrictions are contravened [Section 6-A].		Failure or fraudulent evasion punishable under Sec. 15 (b) and (d).
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1. For date of and Form of Return see Table appended to "Assessment" above.

DUTIES OF LICENSEES

- (8) must pay if dealer is contractor, taxes on turnover determined after deducting fixed percentage for labour, etc. [T.R. 4 (3) (*new*)]. Failure or fraudulent evasion punishable under Sec. 15 (b) and (d) Do.
- (9) must pay additional tax demanded within time allowed on final check up [T.R. 12]. Do.
- (10) may receive refund ordered or get sum adjusted on final check up [T.R. 12].
- (11) may apply for and receive rebate or get it adjusted [G.S.T.R. 9 and 10].
- (12) must, if agent of non-resident principal, comply with Section 14 (A) [*new*].
- (D) Licensees must—**
- (1) apply for licence and pay provisional licence fee [G.S.T.R. 5 and 6].
- (2) produce evidence including accounts to show correctness of information and return [G.S.T.R. 6 (5) G.S.T.R. 6 (11)].
- (3) pay licence fee finally assessed, get refund of excess, or pay deficit on final check up [G.S.T.R. 6 (11)]. Failure is punishable under Sec. 15 (b) & (d) if some elements are made out.
- (4) pay tax, if benefit of Section 5 or 6 is unavailable [Section 6-A, G.S.T.R. 6 (11) (d) and G.S.T.R. 7]. Do.
- (5) exercise rights under licence themselves and not transfer [G.S.T.R. 6 (6)].
- (6) if they want benefit, apply for penalty licence [G.S.T.R. 6 (3)].
- (7) submit returns on due dates³ [G.S.T.R. 6 (9) (10), T.R. 15 (2)]. Failure to submit return or wilful submission of untrue return punishable under Section 15(a).
- (8) if the licensee is under Section 8—
- (a) specify in accounts, the principals, the commission receivable and incidental charges, etc. [See Forms X and XI and Section 8].
- (b) must prove that the transaction is exempt [Section 8 (*new*)].

(9) if the licence is under Section 5, prove the exempt nature of transaction [T.R. 4-A (ii) proviso and T.R. 4-A (iii) proviso (*new*)].

Hitherto we have discussed the operation of the Taxation and other provisions and the duties of the authorities and dealers. When a dealer is aggrieved by the act of an authority acting under the Act, he has certain remedies provided under the Act. We shall now discuss them.

III. APPELLATE AND REVISIONAL TRIBUNALS UNDER THE ACT

(See Sections 11 and 12 and G.S.T. Rules 13 and 14 and Commentaries).

(A).—APPELLATE AND REVISIONAL AUTHORITIES

(i) **Appellate Authority.**—Against all original orders of A.C.T.O's and Dy. C.T.O's [including orders of assessment] the Commercial Officer of the District is the appellate authority (G.S.T.R. 13).

(ii) **Revisional Authorities.**—(a) **Against original orders and proceedings.**—Against all proceedings of original authorities, *viz.*, Assistant and Deputy Commercial Tax Officers, the Commercial Tax Officer of the District and the Deputy Commissioner (G.S.T.R. 14) having jurisdiction are the Revisional authorities (G.S.T.R. 14). Further revision is sustainable to the Board of Revenue [Section 12 (1) and (2)].

For territorial jurisdiction of Deputy Commissioners—see below.

(b) **Against appellate and revisional orders and proceedings.**—There are two classes of assessee, *assesseees with turnover from Rs. Rs. 10,000 to Rs. 20,000, and assesseees with turnover exceeding Rs. 20,000.* Assessment orders and other original orders and proceedings are passed by A.C.T.O's., in regard to the former class and Dy. C.T.O's. pass orders in regard to the latter class. Appeals and Revision petitions in the first instance in all cases lie before the Commercial Tax Officer of the District, but a further revision lies against the appellate and revisional orders of the District Commercial Tax Officer.

In the case of revision against the appellate orders of the C.T.O., revision lies to the Deputy Commissioner of Commercial Taxes if the assessee's turnover does not exceed Rs. 20,000, or to the Commissioner of Commercial Taxes (Board of Revenue), if the turnover exceeds the sum (G.S.T.R. 14). Against a revisional order passed by the Deputy Commissioner, further revision to the Board of Revenue lies [Section 12 (1) and (2)].

(iii) **Territorial Jurisdiction of Deputy Commissioners.**—There are three Deputy Commissioners in the Province for the Central Southern and Northern Divisions.

The Central division has Madras as its headquarters and comprises the Districts of Madras, Chingleput, South Arcot, North Arcot, Salem, Tanjore and Trichinopoly.

The Southern division with its headquarters at Coimbatore consists of the districts of Coimbatore, South Kanara, Nilgiris, Madura, Tinnevely, Ramnad and Malabar.

The Northern division with its headquarters at Bezwada consists of the districts of Vizagapatam, Nellore, Chittoor, Guntur, Kistna, East Godavari, West Godavari, Cuddapah, Kurnool, Bellary and Anantapur.

(iv) Differences between Appeal and Revision.—

APPEAL

REVISION

- | | |
|---|---|
| <p>(1) The person <i>aggrieved</i> must move (Section 11 and G.S.T. R. 13).</p> | <p>(1) The Revising authority may act <i>suo motu</i> or on application (Sec.12 and G.S.T.R. 14).</p> |
| <p>(2) Order appealed against, must be an order of assessment or other original order (G.S.T. R. 13).</p> | <p>(2) The Revising authority may call for and examine the record of any order or proceedings (Section 12 and G.S.T.R. 14).</p> |
| <p>(3) Appeal is a statutory right.</p> | <p>(3) Interference in Revision is discretionary.</p> |
| <p>(4) Appeal must be—
 (i) in prescribed form and verified
 (ii) accompanied by the order appealed against
 (iii) accompanied by proof of payment unless tax is not admitted
 (iv) disposed of only after opportunity is afforded to appellant for being heard (See 11 and G.S.T.R. 13 (6)).</p> | <p>(4) These restrictions (i) to (iii) are inapplicable (Section 12 and G.S.T.R. 14) (iv). In a revision without special leave for personal hearing, a party is not heard in person or by pleader.</p> |
| <p>(5) Appeal must be preferred within 30 days.</p> | <p>(5) [<i>Old</i>] Revision may be preferred at any time. [<i>New</i>] Revision must be preferred within 6 months by the aggrieved party. If interference is <i>suo motu</i>, the Revising authority may interfere at any time, the time limit of 6 months being inapplicable.</p> |

(B) PRACTICE AND PROCEDURE

(i) Appeal

Presentation and Appearance.—An appeal may be presented in person or through pleader or through an authorized agent or sent by

post [G.S.T.R. 13 (5)]. Appellant can employ anyone as his Agent including a Registered Accountant (Press communiqué). Registered Accountants and others authorized agents other than pleaders must produce a power of attorney on non-judicial stamp paper to the value of Rs. 1-8-0 (Schedule I-A, Article 40, Stamp Act). Lawyers can appear by filing a vakalat stamped with Court-fee stamp of rupee one only [Schedule II, Art. 10 (A), C.F. Act].

Frequently, Head clerks of District Commercial Tax Officers are authorized to receive appeals under G.S.T.R. 13 (5).

Who can Appeal.—Any person objecting to assessment (Sec. 11) and any person aggrieved by any other original order of assessing or licensing authority can appeal (G.S.T.R. 13).

Limitation for Appeal.—Appeal must be preferred within 30 days from the date of receipt of order appealed against [G.S.T.R. 13 (2)].

Extension of time.—See Commentaries to Section 11.

Form and Stamp.—[G.S.T.R. 13 (3) and (4)].—(i) Order appealed against must be enclosed or omission to enclose it must be explained. If copy enclosed is an authenticated one (certified copy) it must be stamped with Court fee stamp to the value of annas eight for 360 words [Schedule I, Article 9, Court Fees Act].

(ii) Appeal must be stamped with Court fee stamp of rupee one only [Sch. II, Article 11, Court Fees Act].

(iii) Satisfactory proof of payment of tax if tax is admitted is needed [See Commentaries to Section 11].

(iv) Appeal must be properly verified. [G.S.T.R. 13]

(v) Applications for stay, adjournment, etc., must be stamped with Court fee stamp to the value of annas twelve only (Sch. II, Article 1 (b), C. F. Act.).

Granting of Copies.—All Commercial Tax Officers can grant copies of proceedings ¹. The application for copy must be stamped with Court fee stamp to the value of two annas (Sch. II, Art. 1, Court Fees Act.).

(ii) Revision

Presentation and Appearance.—A revision petition may be presented in person or through pleader or through an authorised agent or sent by registered post. An agent includes a Registered Accountant, and such agent must produce a power of attorney on non-judicial stamp paper to the value of Rs. 1-8-0 (Section 1-A, Article 40, Stamp Act).

Vakalat by pleader to be filed before the Deputy Commissioner must be stamped with Court fee stamp of Rs. 1-8-0. [Schedule II, Article 10 (B), C.F. Act], while a vakalat to the Board of Revenue must be stamped with Court fee stamp to the value of Rs. 3 only [Schedule II, Article 10 (C), C. F. Act].

Vakalat before a Commercial Tax Officer has to be stamped with Court fee stamp of rupee one only [Schedule II, Article 10 (A), C.F. Act].

¹ A.I.R. 1937 [Lah. 876 and A.I.R. 1940 Mad. 768 cases under Income-Tax Act

Who can prefer revision.—Party aggrieved can move. But the authority can act *suo motu* also.

Limitation.—No period is fixed for interferences *suo motu*. The Amended Act fixes 6 months for a *aggrieved party to apply* in revision.

Form and stamp.—No form is prescribed. But it is desirable to send a petition duly verified by party as in the case of an appeal enclosing a copy of the appellate order. If the order is an authenticated copy, it must be stamped with Court fee stamp of annas eight only for 360 words (Schedule I, Article 9, C. F. Act).

All revision applications to Deputy Commissioner and Board of Revenue must be stamped with Court fee stamp of Rs. 1-8-0 [Schedule II, Article 1 (c), C. F. Act.]

Applications for stay, adjournment, etc., must also be stamped with Court fee stamp of Rs. 1-8-0 [Schedule II, Article 1 (c), C. F. Act.]

Granting of copies.—All Revisional authorities can grant copies of proceedings¹. The application for copy must be stamped with Court fee stamp to the value of two annas (Schedule II, Article 1, C. F. Act).

(C) POWERS AND DUTIES OF AUTHORITIES

I.—Appellate and Revisional Authorities

(GENERAL)

The Authorities (C.T.O., Deputy Commissioner and Board of Revenue)—

(1) can call for records of subordinate officers and examine them, viz., C.T.O., can call records of A.C.T.O. and Dy. C.T.O.; Deputy Commissioner can call for records of A.C.T.O. Dy. C.T.O. and C.T.O.; Board can call records of Deputy Commissioner, C.T.O. and other inferior officers [Section 12 and G.S.T.R. 14].

(2) may require any person to appear and give evidence (G.S.T.R. 24, 26 and 27).

(3) may examine any person on oath or affirmation (G.S.T.R. 27 read with Rule 24).

(4) may issue summons for production of documents (G.S.T.R. 26 and 27).

(5) may exercise all powers to secure attendance of persons or production of documents (G.S.T.R. 27 read with Rule 25).

(6) may generally exercise plenary powers like confirming, reducing or setting aside assessment and even enhancing subject to other provisions in rules (See below items 14 to 16.) [G.S.T.R. 13 and 14 and Sections 11 and 12.]

(7) may generally exercise plenary powers in regard to all matters in revision and appeal and pass such orders as original authorities may pass (Sections 11 and 12 and G.S.T.R. 13 and 14).

¹ A.I.R. 1937 Lah. 876 and A.I.R. 1940 Mad. 768 cases under Income Tax Act.

(8) shall transfer assessment records to appropriate authority if tax determined by such superior authority (appellate or revisional) is in excess of the original authority's powers, *e.g.*, transfer records from A.C.T.O. to Deputy C.T.O. (G.S.T.R. 16).

(9) shall communicate the order passed in appeal or in revision to the appellant or petitioner a party affected and to the original authority (G.S.T.R. 15).

(10) may adjourn proceedings, such power being available to all tribunals².

(11) need not however communicate the order of adjournment to absent party by *registered post*². It is for the absent party to enquire and ascertain the adjourned date.

(12) can make inquiries (*New*) where he (authority) enhances assessment [G.S.T.R. 14-A (*New*)].

(13) have no general power to make inquiries since such power is available only to assessing and licensing authorities (*see* Turnover Rules and General Sales Tax Rules). Enquiries made by appellate authority behind the back of an assessee was held to be illegal in a case decided under the Income-Tax Act³.

(14) cannot exercise powers so as to alter an assessment after the period of limitation prescribed under G.S.T. Rules 17 and 18 has expired⁴.

(15) cannot enhance assessment so as to include an item which had nothing to do with the subject-matter of appeal or Revision⁵; since even plenary powers have to be exercised with reference to the subject-matter.

(16) cannot enhance tax without notice to the assessee [G.S.T.R. 14-A (*New*)].

II.—Commercial Tax Officer (Special)

The Commercial Tax Officer—(i) as an appellate authority must give a reasonable opportunity of being heard before disposal of appeal. (Section 11 and G.S.T.R. 13).

(ii) can (a) require dealers (the term including licensees) to produce accounts and documents; (b) require them (dealers and licensees) to furnish information relating to their business; and (c) enter premises, etc., and inspect accounts, registers, godowns, shops, etc., and goods (Section 14 and Notification II).

(iii) may exercise power of compounding subject to control of Deputy Commissioner and Board of Revenue (G.S.T.R. 29).

III.—Deputy Commissioner and Board of Revenue. They can control and issue directions regarding compounding of offences. [G.S.T.R. 29].

2. A.I.R. 1930 Mad. 113.

3. A.I.R. 1936 All. 286 (8B).

4. See following cases under Income-Tax Act.

A.I.R. 1938 P.C. 175.

A.I.R. 1938 Lah. 741.

A.I.R. 1927 Lah. 248 and 421.

A.I.R. 1943 Bom. 297.

Observations in A.I.R. 1928 Mad. 287 not correct.

5. A.I.R. 1938 Lah. 741 Appeal under Income-Tax Act.

A NOTE ON THE TRANSITIONAL LAW FOR 1947-48.

Registration.—(New provision)—[See Sections 8-A and 8-B and T.R. 5 (A).]

A dealer with turnover of Rs. 7,500 and over from 1st April to 31st December 1947, must apply for registration on 1st March 1947 [T.R. 5-A (1) Proviso].

Collection and payment of taxes by Registered dealers.—Such registered dealers must pay the taxes collected on or before the 30th April 1948. [See Sections 8-A, 8-B and T.R. 5-A (7)].

The provision prohibiting an unregistered dealer from collecting tax, etc., may be postponed if the Provincial Government so orders not later than 1st April 1948 (Section 8-B).

NEW DEALERS

(1) **Contractors.**—Contractors are dealers only from 1-1-1948. So for tax purposes for 1947-48 only the turnover from 1st January 1948 to 31st March 1948 must be considered. The turnover till 31st December cannot be considered at all for purpose of tax. If the turnover for the quarter from January to March is less than the non-taxable minimum no tax is leviable.

(2) **Dealers in luxury goods.**—They are taxable for 1947-48 only for the last quarter from 1-1-1948 (See Section 3). No tax is leviable if the turnover is less than Rs. 10,000 for the last quarter of 1947-48.

(3) **Resident agents of non-resident principals.**—Section 14-A clarifying the position of agents of non-resident principals operates only from 1-1-1948, though to some extent the prior Section 2 (b) explanation covered such agent's transactions. In applying the law the question must be considered as to the extent to which Section 14-A is wider than the pre-existing law.

Procedure.—Provision is made for collection of tax at 1% for the period from 1-4-1947 to 31-12-1947. Even if provisional notice in Form A-2 has already been issued for 1947-48, it is provided that the notice is deemed to be operative only for the aforesaid nine months. If provisional notice has not been issued, provision is made for provisional assessment and final assessment for the said nine months at the then prevailing rates (1%), and for such assessment (provisional and final) at the enhanced rates for the next three months (till 31st March 1948), after further issue of necessary notices. (T. R. 7 proviso; T.R. 8 proviso; T. R. 10 provisos; T.R. 11 (4) provisos and Form A-2).

In taxing dealers who were liable to be taxed for the entire year 1947-48, roughly the non-taxable minimum may be taken as Rs. 7,500 for nine months (till end of December 1947) and as Rs. 2,500 for the last quarter of the year, for purpose of assessments to best of judgment

or finalisation of assessments in the two periods provided also that the entire turnover is taken as Rs. 10,000 and over, for the entire year.

ASSESSMENT AT PRIOR RATES AND NEW RATES— NEW EXEMPTION, ETC.

Increased rates.—Notification IV, G.O. 714, permits assessment at 1% for 9 months and at 3 pies for later 3 months.

Slab rates—Fresh fruits.—In the case of fresh fruits as per Notification IV, G.O. 715, up to a turnover of Rs. 20,000, slab rates continue to apply. If turnover exceeds Rs. 20,000, upto 31st December 1947, tax has to be calculated at 1 %, and for the later 3 months, tax has to be calculated at 3 pies in the rupee.

Jute.—See Notification IV, G.O. 717.—Till 31-12-1947 the concession or exemption now allowed (from 1-1-1948) was not allowed and the turnover till that date must be calculated and taxed. (See Section 3, Commentaries and Table).

Mill cloth.—Issue of and cancellation of Notification, See Notification IV.

LICENCES

(See SECTION 5, COMMENTARIES AND TABLE)

Licences already issued before 31-12-1947 are valid and operative subject to Notifications under Section 6 [G.S.T.R. 6 (12)].

So in the case of dealers with licence for dealing in bullion and/or specie or for dealing in handloom cloth woven partly or wholly with mill yarn and sold to actual consumer, or for dealing in non-handspun cotton yarn, the licensees are not taxable up to 31st December 1947. No notifications have been issued taxing them from 1-1-48 to 31-3-48. [See under Notification IV].

If exemption is conferred for the first time by the Amending Act of 1947, application for licence if necessary must be made before 1-3-48.

Non-Handspun cotton yarn.—See Commentaries to Sec. 5 (ii).

ESCAPEMENT AND RECTIFICATION

Escapement of Assessment or licence fee in whole or in part, or rectification of mistakes in assessment, etc., in 1946-47, is permissible till 31st March 1949 since under the amended Rules (G.S.T.R. 17 and 18) the period of limitation for interference is extended to 2 years. The said assessments, etc., do not become final on 31-3-1948. But the assessments, etc., for 1945-46 cannot be reopened since they have become final under the unamended rule after the lapse of one year (on 31-3-1947). [G.S.T.R. 17 (3) 18 (4)].

CHALLENGING LIABILITY IN CRIMINAL COURT

See SECTIONS 15 AND 16-A AND COMMENTARIES.—The amendments take effect only on 1-1-1948 and do not affect pending prosecutions.

THE
MADRAS GENERAL SALES TAX ACT
(ACT IX OF 1939 AS AMENDED BY
ACT XXV OF 1947.)

[*Main Act received the assent of the Governor on the 4th June 1939, first published in the Fort St. George Gazette, on the 13th June 1939.*]

[*Amending Act received the assent of the Governor on the 10th December 1947, first published in the Fort St. George Gazette on the 11th December, 1947.*]

An Act¹ to provide for the levy of a general tax on the sale of goods in the Province of Madras.

1 REFERENCES TO PAPERS CONNECTED WITH THE PRINCIPAL ACT AND THE AMENDING ACTS IN THEIR BILL STAGES.

The Madras General Sales Tax Act, 1939 (Madras Act IX of 1939).

[For Statement of Objects and Reasons, see Part IV of the *Fort St. George Gazette*, dated 12th February 1939, pages 63-64; for proceedings in the Assembly, see *Madras Legislative Assembly Debates*, Volume 12, pages 48-75; 122-187, 228-279, 465-488, 726-772, 794-841, 848-855 and 855-869; for Report of the Select Committee, see Appendix IV, pages 334-353 of the *Madras Legislative Assembly Debates*, Volume 12; for proceedings in Council, see *Madras Legislative Debates*, pages 351-418 and 420-529.]

The Madras Finance (No. 2) Act, 1943 (Madras Act XVII of 1943).

[For Statement see Part IV-B of the *Fort St. George Gazette*, dated 23rd March 1943, page 60.]

The Madras General Sales Tax (Amendment) Act, 1944 (Madras Act X of 1944).

[For Statement of Objects and Reasons, see Part IV-A of the *Fort St. George Gazette Extraordinary*, dated 9th March 1944.]

The Madras Tobacco Taxation of Sales and Licensing (Repeal) and General Sales Tax (Amendment) Act, 1944 (Madras Act XII of 1944).

[For Statement, see Part IV-B of the *Fort St. George Gazette*, dated 4th July 1944, page 56.]

*The Madras General Sales Tax (Amendment) Act, 1945
(Madras Act VII of 1945).*

[For Statement, see Part IV-B of the *Fort St. George Gazette Extraordinary*, dated 27th April 1945.]

*The Madras General Sales Tax (Second Amendment) Act, 1945
(Madras Act IX of 1945).*

[For Statement of Objects and Reasons, see Part IV-A of the *Fort St. George Gazette*, dated 13th March 1945.]

*The Madras General Sales Tax (Amendment) Act, 1947
(Madras Act XXV of 1947).*

[For Statement of Objects and Reasons, see Part IV-A of the *Fort St. George Gazette*, dated 30th September 1947, pages 209-212; for Act See Part IV-B of the *Fort St. George Gazette*, Extraordinary dated 11th December 1947, pages 1-8.]

Sections 3 and 4 of the Madras Finance (No. 2) Act, 1943, and the whole of the following Acts, namely, the Madras General Sales Tax (Amendment) Act, 1944, the Madras General Sales Tax (Amendment) Act, 1945, and the Madras General Sales Tax (Second Amendment) Act, 1945, were repealed, by section 14 of the Madras General Sales Tax (Amendment) Act, 1947 (Madras Act XXV of 1947) since the prior amending Acts have become spent.

NOTES

FULL TITLE

Use of Full Title. See Introduction

The full title of this Act shows that the enactment provides for a general taxation on sales of goods within the Madras Province. There are other enactments which provide for the levy of taxes on sales of particular commodities or goods, such as the Madras Abkari Act, 1886, the Madras Electricity Duty Act, 1939 and the Madras Sales of Motor Spirit Act. Originally the title of the enactment was the 'Madras Sales Tax Bill'. In view of the general application of the tax, the Select Committee altered the title as "Madras General Sales Tax Bill."

Preamble.

Whereas it is expedient to provide for the levy of a general tax on the sale of goods in the Province of Madras; It is hereby enacted as follows :—

NOTES

Use of Preamble² and enacting part³. See Introduction.

The following stand out predominantly on a consideration of the preamble in this enactment. Firstly, the enactment provides for a levy of a *general* tax on goods, not a tax on specific goods only. In this respect the Act differs from other enactments, such as the Madras Abkari Act, the Madras Electricity Duty Act and the Madras Sales of Motor Spirit Taxation Act which provide for the levy of tax on *certain* classes of goods only. The present Act levies a general sales tax as opposed to a selective sales tax. Secondly, the tax levied by this enactment relates only to *sales*.⁴ A mortgage, hypothecation, charge, pledge or gift is outside the purview of this enactment. Thirdly, it is not that all sales are affected by this enactment. This enactment taxes only sales of *goods*⁵ or movable property. Sales of immovable property are thus outside the purview of the enactment. Fourthly, the enactment affects sales of goods only *within the province of Madras*. Sales of commodities in a native State adjoining the province of Madras, or even in British India outside the province of Madras, are not affected by this statute. If a merchant from Madras goes to a place like Cochin and purchases articles, the transaction is not taxed under this Act.

[PRINCIPAL ACT]

² Short title, extent and commencement.

(1) This Act may be called the Madras General Sales Tax Act, 1939.

(2) It extends to the whole of the Province of Madras.

² 2 A.I.R. 1934 Cal. 741.

³ A.I.R. 1932 Oudh 152 (F.B.).

A.I.R. 1936 All. 507 (S.B.)

⁴ See Sec. 2 (h).

⁵ See Sec. 2 (c), Definition of Goods.

(3) This section shall come into force at once, and the rest of this Act shall come into force on such date as the Provincial Government may, by notification in the *Fort St. George Gazette*, appoint.

[AMENDING ACT]

1. (1) This Act may be called the Madras General Sales Tax (Amendment) Act, 1947.

(2) This section shall come into force at once ; and the rest of this Act shall come into force on such date as the Provincial Government may, by notification in the *Fort St. George Gazette*, appoint.

NOTES

Use of Short title⁶. See Introduction

History of Bill (Principal)

The Madras Sales Tax Bill was published in the *Fort St. George Gazette*, dated 28-2-1939, and the Bill was referred to a Select Committee on 1-4-1939. The Select Committee went into the numerous representations made to them by various bodies and persons and also heard in person the representatives of the Madras Chamber of Commerce and the South Indian Chamber of Commerce. The Select Committee made certain changes in the Bill and the Bill, as amended by the Select Committee, was published in the *Fort St. George Gazette*, dated 25-4-1939. The Amended Bill was introduced in the Madras Legislative Assembly on the 8th May and in the Madras Legislative Council on the 17th May 1939.

The Act and Rules are not in force in Railway lands in Madras States. (See Notification III). The Act and rules apply to Agency tracts (See Notification III).

Commencement of Act and Rules (Principal)

After having been passed by both the Houses, the Bill secured the assent of His Excellency the Governor of Madras on the 4th June 1939. The Act was published in the *Fort St. George Gazette*, dated 13th June 1939. Section 1 came into operation immediately from 4th June 1939 and the other sections came into operation from 1st October 1939, the day notified by the Governor under Section 1 (3) of the Act⁷ (See Notification I). The Turnover and Assessment rules and the General Sales Tax rules framed under the Act also came into operation from 1st October 1939. (See Rule 2, Turnover and Assessment Rules, and General Sales Tax Rules).

⁶ A.I.R. 1936 Cal. 593.

⁷ See Definition of 'notification'

Sec. 2 (e). See *Fort St. George Gazette*, dated 29-8-1939.

The rules framed relating to the determination of turnover⁸ came into operation only on approval of the same by a resolution of the Legislative Assembly⁹.

All rules (General Sales Tax Rules and also Turnover Rules) framed under Section 19 came into operation after the draft rules were published in the *Fort St. George Gazette* for a period of four weeks¹⁰.

Notification.—See Section 2 (e)

History and commencement of Amending Act

The Amending Bill was originally published in the *Fort St. George Gazette*, dated 30th September 1947, and after consideration by the Select Committee, it was published in the *Fort St. George Gazette* dated 28th November 1947, in an amended form. The Amended Bill was passed in the Legislative Assembly on 1st December 1947 and in the Legislative Council on 5th December 1947. Section 1 came into force on 10th December 1947, the date of Governor's assent to the Amending Act. Other Sections of the Amending Act came into force on 1st January 1948 the day notified by the Governor (Notification I) under Section 1 (3) of the Amending Act.¹¹ The Amending Act was published in the *Fort St. George Gazette* on 11th December 1947.

The amendments to Turnover Rules necessitated by the Amending Act of 1947, were placed before the Legislative Assembly on 19th December 1947 and were published in the *Fort St. George Gazette* on 23rd December 1947.

The Rules under the Amended Act (Turnover Rules and General Sales Tax Rules) also came into force from the 1st January 1948.

After publication in the draft form, the amendments to Madras General Sales Tax Rules were finalised, and in the finalised form the amendments were published in the *Fort St. George Gazette* on the 17th February 1948, though the rules operate from 1st January 1948.

Effect of the Amending Act

See Sections 2 (a), 2 (b), 2 (c), 2 (g-1), 2 (h), 2 (i), 2 (ii), 3, 5, 6, 6A, 8, 8A, 8B, 9, 12, 13, 14A, 15, 16A.

SECTION 2

GENERAL NOTE

This section defines the terms (1) 'assessing authority' [Section 2 (a)] or the authority or authorities that act, (2) terms like 'dealer' [Section 2 (b)], 'registered dealer' (new Section 2-g-1), licence [Section 2 (d)] and 'works contract' [new Section 2 (ii)] or terms which must be considered in determining the classes of persons on whom the tax or licensing machinery operates, and (3) the terms furnishing the fundamental basis of operation of this tax, viz., the turnover of sale of goods [Section 2 (i), (h) and (c)]. Certain miscellaneous expressions like 'prescribed' 'notification', etc., are also defined.

⁸ See Sec. 3 (4)

⁹ See Sec. 3 (4) proviso.

¹⁰ See Section 19 (4).

¹¹ See Notification I, dated 17-12-47

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context

NOTES

It is not possible to define words so accurately as to fit in all conceivable classes of cases. A word used in this Act which is defined in this section has the meaning as defined in this section, unless the word is used in a subject or context in which this definition will not fit. The interpretation clause does not define the meaning of words under all circumstances ¹².

[NEW]

(a) '*Agricultural or horticultural produce*' shall not be deemed to include tea ;

COMMENTS

Shall not be deemed.—The expression means¹³ that while in reality under the general law, tea is agricultural produce, for the purpose of the present Act, tea is not agricultural produce.

Coffee.—Coffee is agricultural produce, see Commentaries to Section 2 (i).

Operation of new definition.—The new Section 2 (a) operates only from 1st January 1948.

For discussion of the law before and after 1st January 1948, see Section 5 (v) and Section 2 (i) and commentaries to the two sections.

(a-1) "assessing authority" means any person authorized by the Provincial Government to make any assessment under this Act ;

Legislative changes, 1939.—The definition of 'assessing authority' did not find place in the original Bill. The original proposal to utilise the services of the Revenue Department was dropped and Government intended to requisition the services of trained officers capable of scrutinising accounts and thus efficiently carry out the provisions of the Act¹⁴.

COMMENTS

A person authorized to make an assessment is the 'assessing authority' under this Act. In its grammatical sense, the term 'assess' means 'fix or determine the amount of tax'¹⁵. Thus a person authorized by the Provincial Government to fix the amount of tax is the 'assessing authority'.

12 A.I.R. 1933 Sind 253.

13 A.I.R. 1930 P.C. 54.

14 In the Legislative Assembly an amendment was moved to add the words "not below the rank of a Sub-Divisional Officer" to the definition on the ground that the highest officers must be appointed for such

purposes so as to avoid petty harassment and misuse of powers. The Prime Minister however opposed this amendment and it was rejected (Legislative Debates, 1939.).

15. A.I.R. 1934, All. 930 Assessment defined. Decision under Income-Tax Act.

ASSESSING AUTHORITIES IN RELATION TO RULES AND NOTIFICATIONS

See NOTIFICATION II, G.S.T.R. 6 AND INTRODUCTION.

[BEFORE AMENDMENT]

(b) "dealer" means any person who carries on the business of buying or selling goods;

Explanation (1).—A co-operative society, a club, a firm, or any association which sells goods to its members is a dealer within the meaning of this clause.

Explanation (2).—The agent of a person resident outside the Province who carries on the business of buying or selling goods in the Province shall be deemed to be the dealer in respect of such business for the purposes of this Act.

[AS AMENDED]

(b) "dealer" means any person who carries on the business of buying or selling goods;

Explanation.

A co-operative society, a club, a firm, or any association which sells goods to its members is a dealer within the meaning of this clause.

RESIDENT DEALER AND EFFECT OF AMENDMENT (1947)

This sub-section deals with resident dealers while Section 14-A (*new*) deals with *non-resident* dealers. Before 1st January 1948, explanation 2 to Section 2 (b) (*old*) dealt with *non-resident* dealers. The principle of explanation 2 to Section 2 (b) (*old*) and Section 14A (*new*) is the same and the object is to bring within legal jurisdiction "the agent responsible for the principal outside the Province." (*Speech of the Premier in the Legislative Assembly in 1939*).

RELATION OF SECTION AND RULES

This sub-section sets out the "persons" liable under the taxation and other provisions of Act and rules.

G. S. T. Rules 19 to 21 framed under Section 19 (2) (c), and G. S. T. Rules 22 and 23 framed under Section 19 (2) (d) and (e), may also be considered.

Fundamental Requisites

The two requisites are :

- I. Carrying on (i) business, (ii) of buying or selling goods, (iii) within the Madras Province.
- II. The person so carrying on being a person under this sub-section.

The two requisites may now be discussed.

Requisite I

The first ingredient is the carrying on of business.

Business.—The Income-Tax Act¹ defines the term as including trade, commerce or any adventure or concern in the nature of trade or commerce. This Act emphasises that only normal business transactions are affected.² The Partnership Act³ defines the term as including trade, occupation or profession. The word connotes a systematic and continuous exercise of occupation as distinguished from pleasure or sport, the object of such occupation being making income or profit.⁴

Business can exist only when there is a succession of acts or continuous exercise of activity. Element of periodic receipt is an essential ingredient normally. *Prima facie*, performance of a single act without periodicity cannot make a person 'dealer'.⁵ In the undermentioned cases⁶ an isolated transaction was held to be not business of a dealer.

But a single venture or isolated transaction may become taxable. For instance, purchase may be with a view to resell at profit⁷. A single plunge may be in the waters of trade. The venture may be a business allied or similar to the one already carried on by the individual or it may be repeated or the transactions may be in large quantities. In such cases the venture may be held to be entered into as a matter of business.⁸ Further there may be activity of a trading nature between purchase and sale enhancing the value of the article. Without these additional ingredients mere profit by sale in the case of an isolated transaction does not make it a taxable venture. Thus, if a casual transaction is not preceded or followed by similar acts or if it is thoroughly unconnected with trade, the transaction cannot be held to be in the nature of business.⁹ Similarly, a company selling its old furniture as a casual transaction is not a dealer. Again sale of a pledged article or security in a *casual* transaction not carried out as

1 See 2(4), Income Tax Act.

2 Use of words carry on business in Sec. 2(b) and course of business, in Sec. 2(h) may also be noted.

3 See 3(b), Partnership Act.

4 See A.I.R. 1940 All. 154 (F.B.); A.I.R. 1925 Cal. 34.

5 See A.I.R. 1933 Bom. 422.

See also A.I.R. 1932, P.C. 138 Shaw Wallace Case Periodicity needed. Income is the fruit of the tree capital. So windfall not income.

A.I.R. 1938, All. 464 (S.B.). Auction sale by decree-holder of J. D's property to realise dues. Auction not business.

A.I.R. 1944 Mad. 63 remuneration to merchant as arbitrator not business, not taxable.

For contra cases See A.I.R. 1935. All. 495 continued advance is business.

A.I.R. 1925, All. 469. Casual business adventure by sale of mill taxed.

See also A.I.R. 1931 Patna 264.

6 A.I.R. 1947 (1) M.L.J. 364 single transaction not dealer transaction under Kerosene Control order.

A.I.R. 1946 Mad. 426 & I.L.R. 1946 Kar. 185. Single transaction not dealer transaction under H.P.P. Ordinance.

7 A.I.R. 1944 Lah. 287.

8 A.I.R. 1934 Mad. 539, See also A.I.R. 1938 Lah. 44.

A.I.R. 1925 Bom. 318.

A.I.R. 1924 Mad. 208.

A.I.R. 1924 Mad. 539.

A.I.R. 1930 Mad. 119.

9 A.I.R. 1930 Rang. 337.

part of regular business would be free from tax,¹⁰ though, if the sale be carried out as part of regular business the person is a dealer. A pawn-broker is a dealer¹¹. Usually the test employed is to find whether there is profit motive, though such a test is not conclusive. Hostels attached to educational institutions are not dealers, the profit motive being absent, while contractors supplying meals to boarders are dealers. Similarly an estate supplying its employees grain, etc., at net cost is not a 'dealer', there being no business. Philanthropic people running fair price grain shops are not dealers. The Bible Society selling books without any profit motive is not a 'dealer'. Another test which also is not conclusive is the maintaining of office and employing of servants, on the part of business concerns.¹² Even if in the course of winding up *business operations* are carried on, there is business for purpose of the Act.

The second ingredient is that the business must relate to buying or selling goods.

(ii) Buying or selling goods

The business must relate to buying or selling goods. The reference is to the two schemes of taxation under the Act (*See* Turnover Rule 4). Some goods like groundnut, cashew, etc., are taxed on the purchase price, the purchaser being liable to pay the tax as a dealer. But the majority of goods are taxed on the sale price, the seller being liable to pay the tax as a dealer.

Mere manufacturing companies are not dealers since there is no buying or selling of goods.

Buying or selling must relate to goods. [*See* Section 2 (c)] Insurance Companies and mere banking companies are not dealers. They at best offer skilled assistance or do some kind of service and make profit. Engineering contractors are dealers from 1st January 1948 though they were not so before that date. Sale need not be accompanied by delivery.¹³ [*See* Section 2 (h)].

Both retail and wholesale merchants are dealers and since the scheme is one of cumulative taxation both of them are taxable.¹⁴

A dealer may deal in all or any kind of goods, *viz.*, goods totally excepted (Section 4) or goods taxed at the stage of purchase and goods taxed at the stage of sale (T.R. 4), goods exempted or entitled to some benefit by virtue of licence (Section 5), goods entitled to rebate (Sec. 7)

10. *See* A.I.R. 1935, Mad. 387. Moneylender court-auction purchaser of Mill for debts. Realisation not taxable. *See also* A.I.R. 1934 All. 370. Casual sale of shares not business.

11. Press Communique issued by the Ministry in 1939.

12. *See* A.I.R. 1939 P.C.J. *See also* A.I.R. 1936 Mad. 267.

13. An attempt in the Legislative Assembly to add the words "accompanied by delivery" to Sec. 2(h) was defeated. The Premier opposed the amendment, as it would exclude a large body of businessmen.

14. An attempt to confine the tax only to retail traders was defeated (*Legislative Debates, 1939.*)

and goods taxed at single point (Section 5) and he may also be a licensed agent. So to determine taxability, the net turnover has to be arrived at after making necessary deductions (Turnover Rules 5 and 6).

Buying and selling by Contractors (New)

[See SECTION 2 (h) AND SECTION 2 (i)]

In the case of contractors, there is implicit *sale of goods* used for the contract works and to the limited extent of such *sales* they are dealers.

The third ingredient is that the sale must be within the Madras Province.

(iii) Within Madras Province

It is obvious that the carrying on of business by a dealer must be within the Madras Province. The Act itself is applicable to the Madras Province only and only business within the Province is affected. The principal place of business must be within the Province. [See T. R. 6, Section 2 (h) and commentary to "Place of Sale" in Section 2 (h).]

The place of residence of a company may be considered to be the place where the business is carried on. In the case of incorporated companies, the place of incorporation is the place of residence of the company. "The residence and domicile of an incorporated company, is the place where the administrative business of the company is conducted which may not be the place where the other business of the company may be carried on. It is the place where its incorporation is ; it is the place where the governing body of the company meets and exercises powers conferred on it by statute."¹⁵

In the case of a Contractor, it is not the place where the Building or other contract is executed that is the place of contract, but the general place of business.¹⁶ Carrying on business need not be done personally. Business done by agent is also carrying on business by principal.¹⁷

Requisite II

Broadly, Dealers fall into three groups :

- (1) Individuals.
- (2) Groups.
- (3) Representative and constructive Dealers.

(1) Individuals as dealers—"Person"

The term used in Section 2 (b) is "Person". In common parlance all individuals are persons. (See also below "Groups".)

15. 27 Mad. 321. See also A.I.R. 1928 Sind III.

16. See English cases cited in "Law Lexicon, p. 178."

17. See 12 Bom. 507.

17 Bom. 662.

4 Mad. 209.

8 Cal. 878.

If each member of a Joint Family carries on different kinds of business *separately* without the association of other members, the different kinds of business thus separately carried on, are assessable separately.¹⁸

Court.—Court is not a dealer and when property is sold in Court auction, the sale is not taxable (Press Communique of Ministry).

The second division relates to groups.

(2) Groups as Dealers—"Persons"

According to the Madras General Clauses Act, the term "person" shall include any company or association of individuals whether incorporated or not.¹⁹ The Income-Tax Act defines the term "person" as including a Hindu undivided family.²⁰

The explanation is explanatory of clause (b) and cannot be taken to be exhaustive of all classes of cases in which 'groups' are dealers.

Co-operative Society.—Under the Co-operative Societies Act (2 of 1912) a Society may be formed and registered which has for its object "the promotion of the economic interests of its members in accordance with co-operative principles."²¹ A Co-operative Society may be registered with a limited or unlimited liability. A Co-operative Society formed for buying and selling goods to its members is not exempt from the operation of the section.²² *Producers' Co-operative Societies* are not dealers for the purpose of this Act for they function merely as agents and they do not buy or sell goods. But *Consumers' Co-operative Societies* and stores would be affected by this Act since the societies buy or sell goods to consumers. If a number of consumers join together they cannot claim exemption.²³

A club or a firm.—A voluntary association of members founded on contract for social and other purposes is a club. A club is distinguishable from a partnership. The latter is the relationship formed between persons who agree to share the profits of a business carried on by all or by any of them acting for all. Persons who have entered into partnership are collectively called "a firm."²⁴

Association selling goods to Members.—Even an Association selling goods to members is taxable.

Companies.—When the number of partners in a business exceeds twenty in the case of a business (other than banking) the business is compulsorily to be registered under the Companies Act.²⁵ Companies both public and private may be incorporated (registered) or

18. See 1944 I.T.R. 296.

A.I.R. 1943 Mad. 648.

See also 40 C.W.N. 517.

19. Sec. 2, General Clauses Act.

Sec. 3 (22), Madras General Clauses Act.

20. Sec. 2 (9), Income-Tax Act.

21. Sec. 4, Co-operative Societies Act.

22. Attempt to exclude Co-operative

Societies from the Act proved infructuous in the Legislative Assembly.

23. Unlike this Act the Punjab Sales Tax Act excludes Co-operative Societies.

24. Sec. 4, Partnership Act, 1947(2) M.L.J. 255. (Case under present Act) Firm is "dealer".

25. Sec. 4, Companies Act.

unincorporated (unregistered) and the incorporation may be with or without limited liability.²⁶

All classes of companies are dealers if they carry on the business of buying or selling goods in the Madras Province.

An undivided family may be a dealer. Such undivided family is wider than a coparcenary. The latter consists of only members having right by birth (sons, grandsons and great-grandsons). But an undivided family may consist of collaterals and even persons entitled only to maintenance in law.

Crown.—It is a principle of law that in the case of a taxing enactment the Crown is bound unless exempted.²⁷ But since our Government decided not to tax sales of their departments, our Government must be considered to be outside the purview of the Act.

Other Governments.—Under Government Trading Taxation Act (Act III of 1926) trade or business carried on in our Dominions by the Government of any part of His Majesty's Dominions is subject to taxation law in force in India.²⁸

Local Authorities.—The Income-Tax Act was amended to include in the definition of the term 'person' a local authority. In the United Kingdom, local authorities are dealers if they carry on business. Local authorities come within the term 'person'. But in the absence of any amendment extending the definition of the term on the lines of the Income-Tax Act, it is a matter not free from difficulty, whether Municipalities and Local Boards are dealers.

We come to the third division.

(3) Representatives as Dealers and Constructive Dealers

(See A, B and C below)

(A) **Agent.**—An agent of a *Principal resident within the Province* is not a dealer. He merely brings the seller and buyer together. The seller and buyer are within the jurisdiction of the tax system. To protect himself the agent may take out a licence under Section 8, and in the absence of such licence he may run some risk. But whether licensed or unlicensed he is not a dealer. On the mere ground of absence of licence he cannot be considered to be a dealer.²⁹ For

26. Sec. 5, Companies Act.

27. A.I. R. 1935 Bom. 347.

28. A.I. R. 1930 All. 389.

A.I.R. 1934 P.C. 34.

See also A.I.R. 1941 Bom. 93 and 1947 I.T.R. 367.

29. Chandrasekara Iyer J. in 1947 (2) M.L.J. 220. Case under the present Act.

In the working of Section 8, the department considered every unlicensed agent (even of a resident principal) and even a licensed agent contravening

conditions of licence as a dealer. The fiction was imported that the unlicensed agent is a dealer. In other words a transaction effected through an agent was split up into two transactions—one from the dealer to the agent, and the other from the agent to the transferee. This view is illegal. So the Government which sought to amend the Act upholding this departmental view gave it up. The correct view has been laid down in the decision cited above. (See Section 8, Commentaries,)

commentaries to Section 2 (b), explanation (2) (*old*), see Section 14-A (*new*) and Sec. 8

(B) Other representative or constructive dealers, like Guardian, Trustee or Agent (*see* G.S.T.R. 22) of incapacitated person; Court of Wards, Administrator-General, Official Trustee (*see* G.S.T.R. 23); Incoming Partner, Legal Representatives of Deceased Partner (*See* G.S. T. R. 19 and 21) are liable as dealers.

(C) Contractors as Dealers (New).

See SECTION 2 (h), 2 (i) AND SECTION 3

To the limited extent of sales of goods used in contract works Contractors are dealers for the purpose of this Act.

[BEFORE AMENDMENT]

(c) "goods" means all kinds of movable property other than actionable claims, stocks and shares and securities and includes all materials, commodities, and articles;

[AS AMENDED]

(c) "goods" means all kinds of movable property other than actionable claims, stocks and shares and securities and includes all materials, commodities, and articles *including those to be used in the construction, fitting out, improvement or repair of immovable property or in the fitting out, improvement or repair of movable property; and also includes all growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.*

Analogous Law.—The Bombay Bengal and Bihar Sales Tax enactments give a list of *tax-free* goods (Goods not subject to tax on sales) and Government is given power to add to or amend the list by Notification in the official *Gazette*.

Effect of Amendment (1947).—Consequent on the decision to tax Contractors on the implicit sale of movable property utilised by them in their works contract, the definition of the term "goods" undergoes a change. A second change relates to bringing the definition on a line with the definition of "goods" in the Sale of Goods Act, thus making the intention of the Legislature clear.

Goods in relation to Act and Rules

Exempt from tax, *see* Section 4 and Turnover Rules 5 (1) (d).

Exempt if licence taken, *see* Section 5 and Turnover Rules 5 (e).

Additional tax on luxury goods, *see* Section 3 and Turnover Rules 4-B (*new*).

Taxed at single point, etc., *see* Section 5 and Turnover Rules, 4-A and 5 (1) (e).

Subject to rebate, *see* Section 7 and Notification.

Of accommodating dealer, *see* Section 2 (i) (iv) and Turnover Rules 5 (1) (c).

Returned, Turnover Rules 5 (1) (b).

Taxed in seller's scheme, Turnover Rules 4 (1).

Taxed in buyer's scheme, Turnover Rules 4 (2).

Sold by licensed agent, Section 8.

See also under Sections 4 to 7.

Summary.

"Goods" means

- (i) all kinds of movable property ;
- (ii) and includes all materials, commodities and articles.
- (iii) [*New*] Growing crops, grass and things attached to but agreed to be severed from it under sale.
- (iv) [*New*] Things used in a "Works Contract".

The following are not goods (being excepted from Act) :—

- (i) actionable claims
- (ii) stocks and shares and securities.

Movable Property.—The term 'property' means a thing over which Man has dominion. Property is of two kinds—movable and immovable. In an early Madras case¹ Justice Holloway defined "movability as capacity . . . in a thing of suffering alteration" in relation to place and "immovability, as the incapacity for such alteration. If, however, a thing cannot change its place without injury to the quality by virtue of which it is what it is, it is immovable property." For exemptions, *see* below.²

The term movable property has not been defined in this Act. But the General Clauses Act³ defines the term as property of every description excepting immovable property and immovable property is defined⁴ as "land, benefits arising out of land, and things attached to the earth or permanently fastened to anything that is attached to the earth". The term attached to the earth means "(a) rooted to the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls and buildings; or (c) attached to what is imbedded for the beneficial enjoyment of that to which it is attached"⁵. Both the Transfer of Property Act⁶ and Registration Act⁶ exclude

1. 6 M. H. C. Rep. 71.

2. For exemptions *see* Sec. 2 (i) proviso and Sections 4, 5, 8 and T.R. 5.

3. Sec. 3(19), Madras General Clauses Act.

4. Sec. 3(14), Madras General Clauses Act.

5. Sec. 3 Transfer of Property Act.

6. Sec. 2(6), Registration Act.

standing timber, growing crops and grass from the category of immovable property and they are movable property.⁷ Under the Sale of Goods Act and the present Amended Act growing crops and grass are movable property and even things attached to or forming part of land are movable property if "they are agreed to be severed before sale or under the contract of sale."⁸

Fruit and juice of trees.⁷—They are movable property.⁸

Leaves of trees.—They are movable property.⁹

Growing crops and grass.—They are movable property¹⁰ whether before or after harvesting.

Trees and standing timber.—If the intention is to cut the trees and sever them from land for domestic or building purposes, etc., before or at the time of sale or after sale, and convert them (trees) into fuel or timber, they are movable property. But if the object is to enjoy the tree without severing it from the land it is immovable property.¹¹ In short, when agreed to be severed from earth, trees, vegetation, etc., are movable property.⁸ So standing timber and casuarina trees are certainly movable property.¹²

House.—Sale of house built on a site (with foundations) for being enjoyed, with option to pull it down if the vendee likes cannot be construed as sale of movables or materials comprising it.¹³

Things attached to earth.—Ordinarily an installation like flour mill which is removable is movable property.¹⁴ But here again the question is one of intention. If the attachment is for the beneficial enjoyment of the chattel or movable property attached, then the thing continues to be movable property. If, however, the thing imbedded or attached to what is imbedded is for the beneficial enjoyment of the immovable property, then it is part of immovable property.¹⁵ The object of the installation, and the title of the person making the installation can be also considered. Where the lessees of a premises ran a cinema and installed an oil engine as part of the cinema for generating electricity and lighting, it was held that the lessee would not have had the intention of making a permanent improvement having regard to the title of the person fixing it and the oil engine was consequently held to be movable property. The case may be different if the owner installed the machinery. The degree of the annexation can also be considered.

⁷ Sec. 2(9), Registration Act.

⁸ Sec. 2(7), Sale of Goods Act and amended Sec. 2(c) present Act.

⁹ A.I.R. 1938 Nag. 377; A.I.R. 1937 Nag. 116.

¹⁰ Amended Sec. 2(c). See also A.I.R. 1926 All. 164. See also Footnotes 6 to 8 above.

¹¹ See 24 Bom. 31; A.I.R. 1926 Oudh. 136 Mango tree movable if intention to sever from ground and use timber.

¹² A.I.R. 1929 Oudh. 93 Trees to be cut and removed movable,

20 Mad. 58 and 3 L. W. 341 Tree cut movable.

A.I.R. 1926 All. 350 and A.I.R. 1938 All. 115 Nim tree timber movable, A.I.R. 1933 All. 50 Fruit tree immovable.

See A.I.R. 1926 Pat. 125; A.I.R. 1936 Pat. 66 Palm and date trees for using produce immovable.

¹³ A.I.R. 1931 All. 392 (F.B.)

¹⁴ A.I.R. 1926 Mad. 343.

¹⁵ A.I.R. 1936 Lah. 242.

15. A.I.R. 1940 Mad. 527,

Where a factory was fixed with bolts, and pillars were fixed to a depth of 6 or 7 feet and both the ground and the machinery were purchased by the vendee, the machinery was held to be immovable property.¹⁶

In a case of contract for the construction of a building (which is immovable property) furnished with movable articles like lights, etc., the movables according to the intention of parties are part of the building which is immovable property and the turnover cannot be separated so far as movables are concerned. Hence no tax is leviable. This is the law before 1st January 1948. But under the Amended Act, the contractor is taxable on the turnover of sale of movable property of articles used in the Works Contract [see Section 2 (ii)]. The contractor is supposed to sell goods and services and is taxed on the sale of the former.

Fishery.—It is immovable property.¹⁷ It can also be held to be benefit arising out of land covered with water. But when fish is caught and incapable of escape the fish is movable property.¹⁸

Money.—Though the Legislature has not taken care to exclude from the definition of the term “goods” money as in the case of Sale of Goods Act,⁸ in every transaction of sale of goods money is paid for goods purchased and the contrast is between goods and money. So by implication the section would exclude money from its operation.¹⁹ Insurance Companies, Banks, etc., which receive money promising to repay money in future, do not fall within this definition. But old coins which are purchased as objects of curiosity are certainly goods and fall within the section.²⁰

Includes materials, commodities and articles.—These words have been taken from the definition of the term “goods” in the Government of India Act of 1935.²¹ The term ‘material’ connotes matter from which a thing or article is made like the term ‘raw material’. The term ‘commodity’ means ‘an article of trade.’ The term ‘article’ means only a thing.²² The use of the term “includes” shows that what are mentioned as falling within the term “goods” are only enumerative and not exhaustive. Both raw materials and finished commodities fall within this definition.²³atables and food sold by hotels would come within the definition of goods. Newspapers, books and periodicals are goods for the purpose of this Act.

Gas, water.—It is doubtful whether these are goods.²⁴ But aerated waters are goods.

Services.—Skilled assistance and services are not goods. A company or person or authority offering services cannot be held to be

16. A.I.R. 1944 Mad. 492 English Law discussed.

17. Sec. 2(6), Registration Act.

18. A.I.R. 1943 Mad. 34. Theft of fish.

19. See 3 Cal. 379 (whether Currency notes not goods under Section 76 of the Contract Act). See also 19 M.L.J. 283 (half notes).

20. See (1899) 2 Q.B. 111 and 25 Bom. 702.

21. Sec. 311, Government of India Act.

22. See ‘Oxford Dictionary’.

23. See 52 Cal. 1.

24. (1883) 11 Q.B.D. 217 (1899) 2 K.B. 604; (1911) A.C. 116.

dealing in goods. Thus no tax is payable on water tax realised by a Municipality since the tax is price realised for sale of *services* (in supplying water). Similarly Court fee is only price realised for sale of services entitling the party to sue in a Court of law. No tax is payable on sale of Court fee stamps (*see also* under Section 3, Crown Sales).

Sometimes it would be difficult to distinguish between goods and services. A printing press printing books as part of job works is not taxable. But if it sells books printed by itself or others, it is taxable. Similarly in the case of a doctor who sells medicine as a business and at the same time practises his profession, the turnover in respect of the former is taxable while the turnover in respect of the latter is not taxable.

If the cost of services is not separable from cost of goods [*see also* Section 2 (i) *Explanation*] no deduction has to be made towards cost of services. For example, in the sale of account books no deduction is admissible towards cost of ruling, printing, etc.

Similarly a doctor cannot be taxed on medicines supplied as part of his profession to patients he treats. But if he runs a *separate* dispensary he is taxable on the medicines sold.

Actionable claims.—The term ‘actionable claim’ has the same meaning as a ‘chose in action’ in English law. The term ‘chose in action’ (movable property not in possession, but realisable by action) is used in English law in contra-distinction to the term chose in possession (movable property in possession). For instance, arrears of rent, constitute an actionable claim for they constitute property realisable by action. But a judgment-debt is not an actionable claim, for no action is needed to recover it.²⁵

Stocks, shares and securities.²⁶—The capital of an incorporated company (a joint stock company) is usually divided into a number of shares and the shares are offered for sale to the public. The term “stock” has been defined in the Indian Trustees Act as any “fund, annuity or security transferable in books kept by any company or transferable by deed or transferable by deed accompanied by other formalities.”²⁷ The term “Securities” has been defined in the Indian Succession Act²⁸ as including “any promissory note, a debenture, stock or other security of the Central Government or of a Provincial Government or any stock or debenture of or share in a company or other incorporated institution or debenture or other security charged by Act of Parliament or issued by a local authority.”

Business as going concern.²⁹—Sale of business as a going concern is not sale of goods within the meaning of this Act though, indirectly goods also are transferred [*see* Turnover Rule 5 (i), (h)].

25. Sec. 3, Transfer of Property Act.

26. *See* Sec. 2 (16) of Companies Act.
See also Sec. 311, Government of India Act.

27. Sec. 2, Indian Trustees Act.

28. Sec. 370(2), Succession Act.

29. *See* Premier's reply to Sir F. Birley's amendment in the Legislative Council on the 19th May 1939,
See A.I.R. 1927 P.C., 76.

(d) "licence" means a licence granted or renewed under this Act.

NOTES

The word licence means permission to do something. But for the permission, the act done would be illegal.¹ For provisions relating to licences see Sections 5, 6 and 8 of this Act.

(e) "notification" means a notification published in the *Fort St. George Gazette*.

(f) "prescribed" means prescribed by rules made under this act.

(g) "Province" means the Province of Madras.

NOTES

The main Act and the Amending Act of 1947 extend to the whole of the Madras Province which is the territory administered by the Governor of Madras aided by his Council of Ministers². This Act and Rules have been made applicable also to partially excluded areas administered by the Governor of Madras³ by notifications (See Notification III).

Excluded areas and partially excluded areas in Sections 91 and 92 of the Government of India Act of 1935 correspond to Scheduled Districts as defined in the Scheduled Districts Act (14 of 1874). Under the Government of India (excluded and partially excluded areas) Order of 1936, Laccadive islands (including Minoy), and the Amindivi islands are *excluded areas* while the East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa Order, 1936) are the *partially excluded areas*.

~~No~~ Notification has been issued applying the Act to Pudukotta and Banganapalle. See under Notification III.

[NEW]

(g-1) "registered dealer" means a dealer registered under this Act.

COMMENTS

For Registration of dealers.—See Section 8A.

See also new Turnover Rule 5-A.

1. See Sec. 52, Easements Act.

2. See Sec. 3(24), Madras General Clauses Act 'definition of Madras pre-

sideney'. and Sec. 46, Government of India Act, 1935.

3. Sec. 92, Govt. of India Act, 1935.

[BEFORE AMENDMENT]

(h) "sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge;

Explanation—A transfer of goods on the hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be sale.

[AS AMENDED]

(h) "sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, *and includes also a transfer of property in goods involved in the execution of a works contract*, but does not include a mortgage, hypothecation, charge or pledge;

Explanation—(1) A transfer of goods on the hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale,

Explanation—(2) *Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale or purchase of any goods shall be deemed, for the purposes of this Act, to have taken place in this Province, wherever the contract of sale or purchase might have been made—*

(a) *if the goods were actually in this Province at the time when the contract of sale or purchase in respect thereof was made, or*

(b) *in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced in this Province at any time after the contract of sale or purchase in respect thereof was made.*

Effect of Amendment of 1947

Two changes are introduced by the Amending Act of 1947

Firstly, according to the Amendment, where a contractor executes a work for a lump sum, there is an implicit sale of the goods used by him for the work.

Secondly, the new Explanation added to the definition of "sale" prevents evasion of sales tax on the pretext that sale was legally completed outside the Province.¹

Importance of the sub-section.—This sub-section and the next one are important. The aim of this Act is to tax turnover. As the aggregate amount for which goods are bought or sold represents the turnover, it becomes necessary to determine whether a particular transaction is a sale or not. Generally speaking, in determining whether a transaction is a sale or not, it would be necessary to determine whether title or property in goods has really passed to the vendee. If property in goods has not passed, the transaction cannot be included in determining the turnover.

Summary and Relation of Act and Rules.—Where property in goods is transferred there is sale. In certain limited cases however, even where title is not transferred (*see* explanation) there is sale for the purpose of this Act.

I. The following are the essentials of 'Sale' :—

- (1) There must be a transfer of property in goods.
- (2) The transfer must be by one person to another.
- (3) Such transfer must be in the course of trade or business.
- (4) Such transfer must be (i) for cash, or (ii) deferred payment, or (iii) other valuable consideration.
- (5) T. R. 17 provides that in cases falling under division (4) (iii) above, the dealer must state in his return the quantity of goods and valuable consideration in detail.

II. Sale includes—

- (1) a transfer of goods on the hire-purchase system,
- (2) transfer of goods on other instalment systems, and
- (3) (*new*) transfer of property in goods in execution of a works contract.

III. Sale does not include (1) mortgage, (2) hypothecation, (3) charge, or (4) pledge.

1. Notes on clauses to the amending Bill published on 30-9-47. In the first edition to this book and in communications to Government in 1944, the present writer urged the need to clarify the place of sale by an expla-

nation on the lines of the amendment of 1947 and indicated also the need for Governor-General's assent to such an Amending Act to cure the repugnancy of the amendment to existing Indian Law.

IV. Place of sale for the purpose of this Act is the Madras Province

- (a) in the case of all goods *existing* in the Madras Province, and (b) in the case of future goods, if the goods are produced in the Madras Province.

COMMENTS

Grammatical variations and cognate expressions

Only the word 'sale' ² is defined in this Act. But the other terms used in this Act like 'bought and sold,' 'buying and selling,' 'buyer and seller' have to be understood with reference to this definition.

Broadly, the two essentials of this sub-section are the following :—

- (1) There must be sale.
- (2) Such sale must be within the province of Madras.

Sale under this Act covers only sale of goods, sale of immovable property being outside the purview of this Act.

The distinguishing mark of sale is the passing of title. In other words, property in goods or title must pass from the vendor to the vendee in sales or purchases under this Act.

Sale is a species of contracts in which property passes to the vendee in goods sold.

So in regard to sale under this Act, the three questions that fall to be determined are :

- I. Has there been a contract of sale of goods ?
- II. Has there been passing of property in goods sold under the contract ? and
- III. Has such sale been within the province of Madras ?

Let us consider the questions one after another.

I. CONTRACT OF SALE

The first question relates to '*contract of sale*.' A contract may take the form of an offer to sell (proposal) by seller followed by acceptance by the buyer to buy, or offer to buy (proposal) by buyer followed by acceptance by seller to sell ³ which acceptance converts the offer into a promise. If such proposal and acceptance are by correspondence, as against the person making the proposal or offer, the posting of the letter of acceptance converts the offer into promise. On the acceptance of an offer, the offer becomes a promise or agreement (promise supported by consideration) or contract (agreement which is not void in law, and which is therefore enforceable in law). ⁴

2. Compare the present definition of the term with the definitions in Section 4, Sale of Goods Act, and Section 54, Transfer of Property Act.

3. Section 5, Sale of Goods Act and Section 4, Contract Act.

4 Section 2, Contract Act.

A contract of sale may be in writing or by word of mouth or may be inferred from conduct⁵. It is not necessary in a contract of sale that payment of consideration or delivery of property must take place immediately.⁶

A contract of sale comprehends both an *agreement to sell* or to *purchase* and actual sale or purchase. When property in goods is transferred unconditionally there is sale. But when it is only agreed that the transfer is to take place "at a future time or is subject to some condition thereafter to be fulfilled", the agreement or contract is only one to sell⁷ and not sale, though by the passage of time or fulfilment of some conditions the agreement or contract may become sale.

Whether a transaction is sale (contract accompanied by transfer of property in goods sold) or a mere agreement to sell is a question of fact to be ascertained from surrounding circumstances.⁸

Let us pass on to consider the second question relating to passing of property in goods sold⁹. Before considering the rules relating to the passing of property in goods, the classification of sales as popularly understood, and as adopted in the Sale of Goods Act may be set out here.

II. TRANSFER OF PROPERTY IN GOODS

(i) **Some popular classes of sales.**—One of the common classes is *sale by description*. In the words of Channel, J. "Sale by description applies to all cases where the purchaser has not seen the goods, but is relying on description alone, without inspection of the goods or even without seeing the sample"¹⁰. The words (sale by description) apply to all goods (whether they are existing goods or goods to be manufactured or produced later) where there is no identification other than by description. The words comprehend description as to the particular class or kind of goods or any statements essential to identify the goods contracted for, with reference to quality, fitness, place of origin, etc.¹¹ In regard to existing goods some of the common classes are *sale by inspection* (where the lot to be purchased is inspected), *sale by sample*¹¹. (where a sample is taken from the bulk and inspected), *sale in gross* (where without measuring the quantity the entire stock of goods is purchased), and *auction sale* (where goods are sold in auction). Some types of conditional sales of existing goods are *sale on approval* (sale effective if approved by buyer) and *sale or return* (sale resting on the option of the purchaser to retain or return the goods).

5. Section 5(2), Sale of Goods Act.

6. Secs. 5 and 9, Sale of Goods Act.

7. Sec. 4, Sale of Goods Act.

8. A.I.R. 1930 Bom. 84.

8A. The Appendix sets out relevant provisions of the Contract Act and Sale of Goods Act.

9. Warley and Whipp (1900) 1 Q.B. 513.

10. "Halsbury's Laws of England". See A.I.R. 1932 Cal. 879.

A.I.R. 1925 Calcutta 609. See also Secs. 15 and 16, Sale of Goods Act.

11. See Sec. 17, Sale of Goods Act.

(ii) **Classification under the Sale of Goods Act.**—For determining the transfer of property in goods sold, only the classification in the Sale of Goods Act is material. Sale may relate to (1) existing goods, *viz.*, goods owned or possessed by the seller, or to (2) future goods, *viz.*, goods to be manufactured or produced or acquired by the seller later after making the contract¹². Existing goods are of two classes: (1) specific goods¹³ (goods identified and agreed upon at the time of sale), or ascertained goods¹⁴ (goods agreed upon by parties as goods to be appropriated to contract, there being no uncertainty as to price, quantity and quality of the goods), and (ii) unascertained goods (goods not so agreed to be appropriated to contract). For instance, when a small quantity of liquor out of a large available stock in a cask is agreed to be sold, it is *unascertained*. But if the small quantity agreed to be sold is taken from the cask and bottled up to be delivered to the buyer, it is ascertained¹⁵.

The characteristics of passing of property in goods may be indicated and the rules relating to transfer of property in goods may also be noticed.

(iii) **Characteristics of passing of property.**—Sale connotes a contract of sale of goods in which there is a transfer of property in goods. Property is defined in the Sale of Goods Act as General Property.¹⁶ In other words, only when the *entire* right in the goods is transferred, and not when any specific right alone or interest therein is transferred as in the case of a mortgage or a hypothecation can it be said that the goods have been sold.

(iv) **Transfer of property in goods.**—The rules as to transfer of property can be briefly stated as follows:—

I. Intention of parties is the governing factor and property in goods passes at such time and place as parties to contract intend. This rule applies to specific or ascertained goods¹⁷. But in the case of all kinds of goods it is provided that parties to contract can, by express agreement, or course of dealing or usage, vary or negative any right, duty or liability arising by implication of law in respect of a contract of sale¹⁸. So, practically whatever the legal implications under the

12 Sec. 2(6), Sale of Goods Act.

13 Sec. 2(14), Sale of Goods Act. The term does not mean goods examined by the buyer, A.I.R. 1937 Cal. 140.

14 A.I.R. 1930 All. 661 at page 668.

Commonly the terms 'specific goods' and 'ascertained' goods are used as interchangeable expressions. There is however some little subtle distinction. All specific goods are not necessarily ascertained goods since price may be left unascertained. (A.I.R. 1937 Cal. 140. See also Sec. 22, Sale of Goods Act).

15 A.I.R. 1941 Bom. 106.

16 Sec. 2 (11), Sale of Goods Act.

17. Sec. 19, Sale of Goods Act.

18. A.I.R. 1938 All. 272. Seller's claim for insurance charges regarding unascertained and unappropriated goods allowed by contract from buyer, though not allowable by law. 27 Mad. 131. Parties to be bound by law adopted by them. See also A.I.R. 1942 Cal. 509. Secs. 19 and 62 of Sale of Goods Act. See also (1865) 6 B. and S. 100 where Justice Willes observes that "the rights of the parties to a Contract are to be judged by that law which they intended, or rather by which they may justly be presumed to have bound themselves". See also [1889] 42 Ch. D. 321.

Sale of Goods Act may be, property in goods passes at such time and place as parties intend by agreement or deemed to intend by course of dealing. For ascertaining the intention, regard shall be had to the (1) terms of contract, (ii) conduct of parties, and (iii) circumstances of the case.¹⁹

II. Where the intention of the parties has not been expressed clearly or where there is no agreement as to the passing of property in goods, the provisions of the Sale of Goods Act would apply.

In a general sense it may be said that the Sale of Goods Act refers to four elements as constituting passing of property in goods, (i) ascertainment of goods in its widest aspect, (ii) deliverableness of goods, (iii) relinquishment of disposing power by seller, (iv) appropriation by either party (seller or buyer) with the assent of the other party.²⁰

The transfer of property in goods with reference to the classification in the Sale of Goods Act may be considered, *viz.*, (A) Existing goods or specific goods, (B) Unascertained goods, and (C) Future goods.

(A)—SPECIFIC OR ASCERTAINED GOODS

(GOODS OWNED AND POSSESSED BY THE SELLER)

(1) **Case of immediate transfer of property—(Unconditional contract of property in deliverable state).**—Ordinarily when specific or ascertained goods are delivered on receiving cash as, for instance, when a bottle of whisky is sold by a retail dealer, title or property in goods passes. But title may pass without there being payment of money or delivery of the goods. The true rule is this. When specific goods are in a *deliverable* state, and when the contract is *unconditional*, property in goods passes on the making of the contract, irrespective of whether property is delivered or consideration is paid.²¹ This principle applies whatever be the character of sale in respect of existing goods, whether it is sale *by description* or *by sample* or *by inspection* or *by auction*. Thus in a sale by auction, property passes when the auctioneer announces the completion of sale.²²

As already considered, contract may be made personally by parties (seller and buyer) or their agents meeting or by correspondence. On the posting of the letter of acceptance of the offer to sell or the offer to buy, the contract is concluded. As against the offeror on the posting of the letter of acceptance the contract is complete.

(2) **Case of postponed transfer of property in goods—(contract with condition).**—(i) **Ascertained and specific goods not in deliverable**

19. See Sec. 19, Sale of Goods Act. See also A.I.R. 1926 Pat. 353. A.I.R. 1936 Ran. 419. Vendee to keep paddy and permitted to sell at time mentioned by vendor at favourable price. Till vendor exercises right no property passes to vendee.

20. Secs. 18 to 25, Sale of Goods Act.

21. Secs. 5, 20, Sale of Goods Act. See A.I.R. 1930 All. 661 and A.I.R. 1938 Lah. 60, cases where delivery either not given or postponed.

Payment and Delivery concurrent. (See Sec. 32, Sale of Goods Act. Title however passes on making of contract.)

22. Sec. 64, Sale of Goods Act.

state.—Where the seller is bound to put goods in a *deliverable* state (e.g., by separating a small quantity of liquor from a cask with a large stock for giving to the purchaser the small quantity sold) property in goods does not pass till the *necessary acts* are done for the purpose.²³

(ii) **Deliverable specific goods (price unascertained).**—Where in regard to specific goods in a deliverable state, something has to be done to ascertain the price, e.g., weighing, measuring, etc., property in goods does not pass till the necessary acts are done.²⁴

(iii) When goods are sent or delivered on **sale on approval** (sale on trial) or **'sale or return'** system, property in goods passes only when the buyer approves the transaction expressly or impliedly by conduct in the former case or if the property is not returned within a reasonable time in the latter case.²⁵

(iv) In the case of goods or railway receipt for goods sent by **V.P.P.**, title in goods sold is retained by the seller till the article itself or the railway receipt is delivered by the Postal authority to the addressee on payment and title passes only on such delivery of the article or receipt.²⁶

(v) In a **C.I.F.** contract (a contract where price includes insurance and freight) goods are delivered to a *Shipping Company* and three documents, viz., the bill of lading, invoice and a policy of Insurance are prepared.²⁷ Payment by the vendee has to be made against the tender of these documents. Similarly when goods are sent by rail, they are delivered to a Railway company, and the railway receipt is obtained by the consignor (seller).

Property in goods sold in these C.I.F. mercantile contracts passes, when there is relinquishment by the seller of the right of disposal over the property.²⁸

The Shipping or Railway Company is a carrier in the eye of law. If no *conditions* are attached at all, *prima facie*, title passes on shipment²⁹ so that if the bill of lading or the Railway receipt is taken in the name of, or endorsed in favour of the *purchaser*, relinquishment is complete.³⁰ If, however, the railway receipt or bill of lading is taken

23. A.I.R. 1941 Bom. 106.

See also Sec. 21, Sale of Goods Act.

24. Sec. 22, Sale of Goods Act.

A.I.R. 1935 P.C. 182. Absence of weighing—Property nevertheless held passed.

A.I.R. 1938 Sind 18. Agreement to weigh. Property does not pass till weighed.

25. Sec. 24, Sale of Goods Act.

A.I.R. 1934 Bom. 360.

26. 42 All. 619.

27. See A.I.R. 1942 Mad. 130.

A.I.R. 1924 Bom. 247.

A.I.R. 1928 Bom. 170.

A.I.R. 1946 Bom. 469.

A.I.R. 1933 Lah. 453.

A.I.R. 1937 Lah. 566.

A.I.R. 1932 Sind 9.

28. Sec. 25(2) and 23(2), Sale of Goods Act.

29. See 18 M.L.J. 457.

30. See A.I.R. 1924 Bom. 325. 1947 (1) M.L.J. 249.

A.I.R. 1927 Lah. 391. A.I.R. 1931 Lah. 260.

See however 48 Bom. L.R. 698. Endorsement of Railway receipt—Buyer only agent of seller.

in the name of the consignor (seller) himself, no property in goods sold passes to the buyer³¹.

If, as is usually the case, the bill of lading and other documents are sent to a banker in the place of the consignee (buyer) for delivery against payment, the banker being the collection agent of the seller, property in goods does not pass till the payment is made³².

(B) UNASCERTAINED EXISTING GOODS

In the case of *unascertained* goods (existing goods but not identified and not agreed upon between parties as appropriated to contract)¹⁴ property in goods does not pass unless and until the goods are firstly ascertained³³ and, secondly, put in a deliverable state and, thirdly, unconditionally appropriated by either party (seller or buyer) to the contract with the assent of the other party³³. Delivery of goods to a carrier without the seller retaining the right of disposal is such appropriation.

(C) FUTURE GOODS

In the case of future goods (goods to be manufactured or produced or acquired later) even where the sale is by description, property in goods does not pass unless and until, firstly, goods of that description are manufactured or produced or acquired; secondly, they (such goods) are ascertained; thirdly, they are put in a deliverable state; and lastly, they are unconditionally appropriated by either party (seller or buyer) to the contract with the assent of the other party³³. Delivery of goods to a carrier without the seller retaining the right of disposal is such appropriation.

Let us pass on to consider the third of the three questions with which we started, namely, the place of sale.

III. THE PLACE OF SALE

The Madras General Sales Tax Act taxes only sales within this Province. So, if sales are outside the Province, they cannot be included in the turnover for purpose of tax.

Preliminarily the question of the law applicable, the effect of the Amending Act of 1947 on the law applicable, and the legality of the amended provision may be considered.

31. A.I.R. 1946 Cal. 245.

See also cases cited in footnote 27.

32. A.I.R. 1927 Lah. 391.

A.I.R. 1931 Lah. 260.

A.I.R. 1937 Lah. 566.

A.I.R. 1924 Bom. 325.

A.I.R. 1928 Bom. 170.

A.I.R. 1930 Cal. 171.

A.I.R. 1938 Sind. 18.

33. Sec. 18 & 23, Sale of Goods Act.

See 1947 (2) M.L.J. 79 Where a buyer (defendant) agreed to accept the seller's (plaintiff's) godown delivery,

and plaintiff having goods in his own godown was asking defendant to take delivery, while the latter was pressing for postponement of delivery, it was held that there was a completed sale of goods ascertained, notwithstanding the absence of actual delivery.

See also A.I.R. 1925 Lah. 581.

A.I.R. 1929 Lah. 38.

A.I.R. 1930 Bom. 529.

A.I.R. 1923 Bom. 92.

50 All. 695,

(i) Law applicable

The question of the place where property in goods sold passes may have to be viewed with reference to

- (1) internal trade (trade within the Province, goods, seller and buyer being within the Province).
- (2) Exports for purpose of this Act (seller being in this Province, goods being in this province, buyer being outside the Province whether in any other Province or outside India).
- (3) Imports for purpose of this Act (Seller being outside the Province whether in any other province or outside India, goods also being outside the Province).

In substance it may be said that the provisions of the Sale of Goods Act apply³⁴. So, the law applicable, if the contract is made in the Madras Province, is the law prevailing in the *Madras Province*. Secondly, the same result would follow even by the application of the principle that the law of the place where goods are at the time of sale would govern. The place of sale is therefore to be determined with reference to the Sale of Goods Act and the present Act [Explanation 2 to this section (*New*)].

(ii) Effect of Amendment

Before the Amending Act, the provisions of the Sale of Goods Act alone governed, in determining the place of sale. But after the Amending Act of 1947 wheresoever the contract may be made, sale is deemed to be in this Province (a) in the case of sale of all *existing* goods (goods actually in the Madras Province), (b) in the case of sale of future goods by description (goods to be manufactured or produced or acquired later) if they are actually so produced in our Province), and (c) in any other case if under the *general* law (Sale of Goods Act)—such sale is within the Madras Province.

34. The place where the property in goods sold passes has to be answered with reference to the place where the contract is made (A.I.R. 1942 Mad. 478 (2); A.I.R. 1933 Mad. 756; (1905) K. B. 677). Even if the law of one Province in regard to this matter is different from the law of another Province in British India, the provinces must be regarded as foreign countries (A.I.R. 1940 Bom. 362).

A second principle usually invoked is that the law of sale is the law of the place where the goods are at the time of sale. By the application of the two principles the net result is that the law applicable in respect of a contract entered into in our Province, or in respect of transfer goods in our

Province is the law in force in this Province. Thus the place of sale has to be determined with reference to the Sale of Goods Act, and the new explanation to the present Act.

Even if the contract is entered into outside the Province, or outside India or even if goods are outside the Province, there is not much difficulty. The reason is this: Throughout British India, Native States and even in British Colonies either the Sale of Goods Act or the principles of the Sale of Goods Act are in operation. There is also to start with, the presumption that the law of the foreign country is the same as British Indian or English law (1918 A.C. 157).

In regard to the two divisions (a) and (b) above, the Amendment Act of 1947 makes a departure from the general law.

(iii) Legality of Explanation

Doubt may arise as to the legality of this provision, (Explanation II). In effect the new explanation brings within the taxation system sales which are not really sales within the Province under the general law. It may be said, that the present explanation affects and enlarges existing Indian law (Sale of goods) in determining the place of sale, and that as "Contracts" is an item in the concurrent list of subjects in the Government of India Act, 1935 (Item 10, list III, Part I), the provision to the extent of repugnancy to the Sale of Goods Act is void in the absence of Governor-General's sanction (Sec. 107, Government of India Act).

The place of sale with reference to the general law and new explanation may now be considered, in detail in relation to the classification adopted in the Sale of Goods Act.

(1) Element of intention (Foot-notes 17 to 19).

General Law—

Parties may agree that on payment of price fixed or on the making of a contract, or on delivery of goods, property in goods sold may pass or may fix a place for performance of contract³⁵ and if the essential ingredient so agreed is outside Province, the sale is outside the Province.

Amended Law—

If goods are in this Province, or if goods are manufactured in this Province, the element of intention of the parties notwithstanding, sale is deemed to be within the Province.

If goods *are outside* the Province or manufactured outside the Province, but if in the intention of parties the ingredient for passing of title takes place within the province, the sale is within the Province. This principle is unaffected by the amended law.³⁶

Let us pass on to the second division in the classification.

(2) Existing specific or ascertained goods.—Immediate passing of property (Foot-notes 21 and 22).

General Law—

If the place where the *contract is made* is within the Province the sale is said to be within the Province. If parties meet and

35. A.I.R. 1934 Mad. 581.

A.I.R. 1933 Bom. 179. See also Sec. 49, Contract Act and Sec. 36, Sale of Goods Act

36. Explanation 2 as published in the amending Bill published on 30th September contained the words "or found" after the words "actually produced". The original Bill would

have covered all cases of imports. But the words "or found" was omitted by the Select Committee. So under the present amended section, in the case of goods manufactured outside the Province or are outside the Province, if title passes outside the Province, the subsequent import of the goods into Province is immaterial.

conclude the contract within the Province, the sale is within the Province. Similarly, in the case of contracts concluded by correspondence, the parties being in different places (as in the case of imports, exports, and even in some instances of internal trade) the place where the communication of acceptance of offer to buy or offer to sell is posted is the place of sale. So if such letter is posted within the Province, the sale is within the Province. *See* Sec. 3.

Amended Law—

If goods are in our *Province*, or *manufactured or produced* in our Province, whether the parties conclude the contract by meeting within or outside the Province, or whether in the case of conclusion of such contract by correspondence, the letter of acceptance is posted within or outside the Province, the sale is deemed to be within the Province.

In the case of goods *existing outside* the Province or *manufactured or produced* outside the Province, if parties meet within the Province and conclude the contract, or if the letter of acceptance is posted within the Province, the sale is within the Province under the general law and this is unaffected by the Amending Act. ³⁶ A.

The third division may be now considered.

(3) Postponed passing of property in goods (Foot-notes 23 and 24).

General Law—

The place where the acts are done to put the goods in a deliverable state, or to ascertain the price (by weighing, measuring, etc.) is the place of sale. If the acts are done within the Province, the sale is within the Province³⁷.

Amended Law—

Wheresoever the aforesaid necessary acts are done, if goods *are* in the Province, or *produced or manufactured* in the Province, sale is deemed to be within the Province.

In the case of goods actually outside the Province, or manufactured or produced outside the Province, if the aforesaid necessary acts are done within this Province, the sale is within the Province. This is general law unaffected by the amended law³⁸.

We pass on to the fourth division.

(4) Other cases of postponed passing of property.

(1) Sale or return, Sale in approval (Foot-note 25).

General Law—

The place where the buyer approves the transaction expressly or impliedly is the place of sale. If *such place* is within the Province, the sale is within the Province. In the case of acceptance of a transaction by correspondence, if the letter of acceptance is posted within the Province, the sale is within the Province.

³⁷. A.I.R. 1938 Sind. 18. Agreement to weigh and measure in buyer's place—Property passes only on weighing in buyer's place.

Amended Law—

If goods are in the province of Madras or produced or manufactured later in this province wheresoever the buyer may be at the time of approval of the transaction, or in the case of contract by correspondence wheresoever the letter of acceptance of the transaction may be posted, the sale is within the Province.

Where goods are or are produced or manufactured outside the Province, if approval is signified from within the Province, or if the letter of approval is posted from within the Province the sale is within the Province. This is general law unaffected by the Amending Act ³⁶.

(ii) V.P.P. Transaction (Foot-note 26).**General Law—**

If the place of delivery of V.P.P. is within the Province, the sale is deemed to be within the Province.

Amended Law—

If goods are, or are manufactured or are produced in the Madras Province, wheresoever they may be delivered, the sale is deemed to be within the Madras Province.

If goods which are, or which are produced or manufactured outside the province later, are sent by V.P.P. and delivered within the Province (goods or railway receipt therefor) the sale is deemed to be within the Province. This is general law unaffected by the Amending Act.

(iii) C.I.F. Contracts (Foot-notes 27 to 32).**General Law—**

If the place where relinquishment of the right of disposal by the seller is complete is within this Province, the sale is within this Province. For instance, in the case of *exported* goods if the bill of lading or railway receipt is taken or endorsed by the seller in the name of the buyer (wherever such buyer may be) the sale is within the Province.³⁸ If in the case of exported goods, the documents are sent to a banker outside the Province for delivery on payment of price, the relinquishment and consequently the sale is *outside* the Province. Similarly if the seller delivers goods to the Railway Company within this Province for conveyance to "self" outside the Province, there is no relinquishment of the right of disposal in this Province under the general law ³⁸.

Similarly in the case of imports, if the relinquishment is within the Province, by the seller resident outside the Province sending documents of title to goods (Railway receipt) to a banker in this Province, and by such banker handing over documents on payment of the price of goods, the sale is within this Province.

Amended Law—

In the case of export of existing goods or goods later on produced or manufactured within this Province, the sale is within this Province wheresoever the right of disposal may be relinquished. In the case in 1947 (1) M.L.J. 249 (Foot-note 38) the sale must be deemed to be within the Madras Province, under this amended section.

In the case of existing goods or goods manufactured outside the Province later, if the right of disposal is relinquished within this Province, by the documents of title to goods (Railway receipt, etc.) being handed over to the buyer by a banker acting for the seller, on payment of the price of goods, the sale is within this Province. This is the general law unaffected by the Amended Law.

Let us pass on to the last or the fifth division.

(5) Unascertained existing Goods and future Goods (Foot-note 33).**General Law—**

The place where the necessary acts of ascertainment, putting goods in a deliverable state and unconditional appropriation or the last of the acts (unconditional appropriation) is done is the place of sale. If such acts or the last of such acts is in the Madras Province, the sale is within Province.

Amended Law—

If goods *are* in this Province or if goods are manufactured or produced in this Province later after contract, the sale is deemed to be within this Province, wheresoever the acts of ascertainment, etc., may be done.

In the case of goods imported from outside the Province, if the acts of ascertainment, etc., or if the last of such acts indicating appropriation, etc., are done within the Province, the sale is within this Province. This is the general law unaffected by the Amending Act.

(New) Transfer of Property in Goods in Works Contract

See 2 (ii) (New) AND 2 (i) (Amended)

[*New*] **Explanation (2)—Notwithstanding.**—The provisions of the explanation prevail against the general law as set out in the Sale of Goods Act.

Sale or Purchase.—The reference is to the two schemes of taxation —Seller's scheme and Buyer's scheme (T.R. 4.)

Time of sale.—The time when the sale shall be deemed to be effected is not expressly stated. But it follows from the definition of the term 'sale' that sale shall be deemed to be effected at the time when property in goods passes³⁹.

By one person to another.—The transferor is the seller and the transferee is the buyer. The word "person" includes a joint family⁴⁰.

39. An amendment moved in the Legislative Assembly to expressly define this matter as the "time when

the consideration for sale is paid" was negatived.

40. See commentary to Sec. 2 (b).

Transfer of goods from one branch of a firm to another branch is not sale, for, there is no transfer from *one person to another*.

Similarly where the owner entrusts goods to an agent or broker for sale, the entrustment does not constitute sale.⁴¹ The relation of a dealer and broker is that of a principal and agent and not of a seller and buyer.⁴¹ The transferor must have *title* to the goods.⁴² Else no title passes to the vendee. If an agent entrusted with goods sells, the buyer acquires title only if the agent is a mercantile agent in possession of goods with the consent of the owner.⁴²

See commentaries to Sections 8 and 14-A.⁴³

In the course of Trade or Business. See Sec. 2(b) Commentaries.

In a Court sale there is no trade or business nor is Court a dealer. So Court sales are not taxable. Similarly if sale of pledged articles is casual, it is not taxable. But if it is part of business, it is taxable.⁴⁴

Cash, deferred payment or other valuable consideration. The present Act includes all forms of transfer of property in goods within the term 'sale', whether the consideration therefor is cash, deferred payment or any other valuable consideration. In this respect, the definition is wider in scope and amplitude than the definition in the Sale of Goods Act, where the price or payment of money consideration is an important element.⁴⁵ One practical effect of this seems to be, that, even where certain goods are exchanged for certain other goods, as, for instance, where a dealer sells finished silver articles, receiving in exchange making charges and equivalent weight of silver, such a transaction would fall within the scope of the definition⁴⁶, though it would be outside the purview of the Sale of Goods Act. When old coins,⁴⁷ valuable as curios, are sought to be exchanged for current coins, the transaction is sale. The transaction of exchange in *Volkart Bros.* case⁴⁸ would fall within the purview of the present Act, though it may not be sale under the Sale of Goods Act. Cash connotes present payment, as opposed to deferred payment or postponed payment.⁴⁹

For a transaction of sale, existence of valuable consideration or in other words, payment of money or money's worth is an important element⁵⁰. Valuable consideration means, *consideration* which is

41. A.I.R. 1939 Bom. 435.

Sec. 2(9) and 27, Sale of Goods Act.

42. Sec. 27, Sale of Goods Act.

43. See also Appendix setting out relevant statutory provisions.

44. Press communique of the Ministry.

45. See Sec. 2(10) and Sec. 4, Sale of Goods Act; 1948 (1) M.L.J. 161 case under present Act.

46. 1948 (1) M.L.J. 161 case under present Act.

47. 25 Bom. 702. In coins which are not legal tender, title does not pass by mere delivery.

48. 11 Mad. 459.

49. The Bill as amended by the Select Committee used the words 'money or other valuable consideration'. In the Legislative Assembly the Premier moved for the substitution of the words "cash or deferred payment" for the word "money". The substitution makes no material change however.

50. Sec. 2 (d), Contract Act—definition of consideration. [See Appendix].

recognised by law. Consideration is lawful, unless it is illegal, or immoral, or opposed to public policy⁵¹. The term "valuable consideration," is used in contradistinction to the term "good consideration." The latter, Morals recognise as valuable, but Law does not. Thus 'gift' out of affection is a transaction, which is unsupported by consideration in law, while the transaction is supportable morally, and has thus "good consideration." Where there is, however, no consideration at all in law for a transfer, as in the case of gift, the transaction is not within the purview of this Act.

Valuable consideration.—*Fixing of.* See T. R. 17: Details to be stated in return.

Unlawful Business

If the *object* of a business is unlawful, but there is consideration for sale conducted in the course of such business, the transaction of sale nevertheless falls within this Act.⁵² For instance, a prize chit transaction, under which subscribers contributing monthly subscriptions are given articles as a result of a drawing every month, the unlucky subscribers being given articles after the close of the period of chit, would amount to a lottery⁵³ but the turnover of the business is certainly taxable; for, there is consideration for the transaction, though the object is unlawful.

Mortgage, hypothecation, pledge or charge.—The words mortgage and hypothecation have practically the same meaning. A mortgage or hypothecation is a transfer of an interest in goods for the purpose of securing the payment of money advanced or to be advanced⁵⁴. Neither the Transfer of Property Act nor the Indian Contract Act refers to mortgage of movable property, but a mortgage of movable property has been recognised as valid in law. A mortgage or hypothecation differs from a pledge. In the case of a pledge, possession in the goods is transferred to the pledgee while, in the case of a mortgage, possession is retained by the mortgagor⁵⁵. The word 'charge' has been defined, with reference to immovable property, in the Transfer of Property Act⁵⁶. Broadly speaking, a person can be said to have a charge on certain property, when he has only a right to payment from out of that property, without having any interest in the property. Unlike a mortgage, in the case of a charge, there is no transfer of interest in property⁵⁷. A mortgage, pledge, or charge of movable property, is excluded from the category of "sale" in this Act. Similarly *licence* is different from sale⁵⁸. A licence does not give

51. Sec. 23, Contract Act.

52. See 33 Cal. 702. Lawful consideration but unlawful object.

A.I.R. 1939 All. 341 } Illegal busi-
A.I.R. 1931 Lah. 376 } ness neverthe-
A.I.R. 1925 Lah. 287 } less taxable
under Income-
Tax Act.

53. See, 57 Mad. 923.

54. Sec. 58, Transfer of Property Act.

55. A.I.R. 1932 Cal. 524 at page 528. Ss. 148 and 172, Contract Act.

56. Sec. 100, Transfer of Property Act.

57. A.I.R. 1932 Lah. 465 (F.B.)

A.I.R. 1934 Bom. 189.

A.I.R. 1932, Oudh 336 at Page 340.

58. Sec. 52, Easements Act.

the grantee an interest in property. It merely imports permission to do something which otherwise would be unlawful. A person getting licence for cutting or enjoying the usufruct of trees is not liable to pay tax. A lease⁵⁹ is not sale. So a mere lessee is not taxable.

Transfer on hire-purchase system and other instalment systems.—Transfer on 'hire-purchase system', and transfer on other instalment systems, form exceptions to the rule, that transfer of property in goods is an essential element in sale for the purpose of this Act. When consideration for sale is agreed to be paid in instalments, it is usually part of the agreement, that title in the goods is retained by the seller, till the instalments are paid entirely. The hire-purchase agreement is a popular feature of present day business transactions. Under the hire-purchase agreement, the title is retained by the transferor, but the hirer (transferee), who takes possession of the article in question, has the option of either paying the stipulated instalments, and thereby becoming the owner of the article, or of terminating the agreement of hire and delivering the article to the transferor. The hire-purchase agreement differs from sale. In the case of a sale, neither party can cancel the transaction, while, in the hire-purchase agreement, the hirer (a person who takes possession) can cancel the agreement. Secondly, in the case of a hire-purchase agreement, title is with the transferor till the entire consideration is paid, while in the case of a sale, title is transferred to the transferee⁶⁰. A hire-purchase agreement differs from a contract of sale for a price payable by instalments. In the former case, the hirer can terminate the agreement and return the chattel, while in the latter case, the vendee has become the owner, though he can pay the price in instalments, and he cannot therefore terminate the agreement⁶¹.

Shall be deemed.—This Act requires the transactions mentioned in the explanation to be treated as sales though really they are not sales under the General Law⁶².

Validity of Tax on hire-purchase agreement.—In effect the Sales Tax Act taxes an agreement under the General Law. Contracts is a subject in the concurrent list of subjects in the schedule to the Government of India Act, 1935, and in the absence of the Governor-General's sanction the repugnancy of this provision to General Law is not cured (Sec. 107, Government of India Act).

Hire-Purchase Agreement—Number of Sales

For purchasing a costly article on hire-purchase system a credit corporation may advance money to seller on behalf of the purchaser. But the single sale to purchaser alone would be taxable. On the other hand a Credit Corporation may purchase the article itself and sell it to a purchaser recovering money in instalments. In such a

59. Sec. 105, Transfer of Property Act.

60. A.I.R. 1932. All 607.

A.I.R. 1938 Nagpur 18.

A.I.R. 1944 Mad. 526.

61. A.I.R. 1929 Mad. 884.

A.I.R. 1932 All. 607.

62. A.I.R. 1930 P.C. 54 Meaning of 'shall be deemed'.

case there are *two sales*, one sale to Credit Corporation and a second sale to purchaser both of which are taxable.

TURNOVER IN HIRE-PURCHASE AGREEMENT.

Though only some instalments are paid the entire consideration must be included in the turnover.

[BEFORE AMENDMENT]

- (i) "turnover" means the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover ;

Explanation.—Subject to such conditions and restrictions, if any, as may be prescribed in this behalf—

- (i) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof ;

[AS AMENDED]

- (i) "turnover" means the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover ;

Explanation.—Subject to such conditions and restrictions, if any, as may be prescribed in this behalf—

- (i) *the amount for which goods are sold shall, in relation to a works contract, be deemed to be the amount payable to the dealer for carrying out such contract, less such portion as may be prescribed of such amount, representing the usual proportion of the cost of labour to the cost of materials used in carrying out such contract ;*

[BEFORE AMENDMENT]

- (ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover; and
- (iii) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former; and

[AS AMENDED]

- (ii) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof;
- (iii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover; and
- (iv) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former.

TURNOVER

Legislative changes (1939). As the word "dealer" has been defined as including a buyer as well, the Select Committee has added the words "either bought or sold." The explanation has been added by the Select Committee. The proviso providing for exclusion of agricultural or horticultural produce was added by the Legislative Assembly in 1939.

Effect of Amendment of 1947

The new clause (i) to Explanation is necessitated by the decision of Government to tax Contractors on the goods used in a works contract [See amended 2 (h) and New 2 (ii)].

Turnover in relation to Act and Rules

Sale or purchase, schemes, T. R. 4 (1) and (2).

Non-taxable minimum, Section 3.

Deductions from T. R. 5.

Turnover of head office and branches, T. R. 5 (2).

Failure to submit return of, offence, Sec. 15 (a), G. S. T. R. 32.

Duty to submit return of, Sections 3, 9, T. R. 6, 11, 13 and 15.
G. S. T. R. 6 (9) and 6 (10).

Turnover in exchange T. R. 17.

Turnover of contractor, T. R. 4 (3).

Analysis of sub-section and relevant rule (synopsis)—This section is the “kernel” of the Act.

Turnover means,

(i) the aggregate amount for which goods are

(a) bought, in regard to goods taxed in buyer's scheme
T. R. 4 (2)

or

(b) sold, in regard to goods taxed in the seller's scheme
T.R. 4 (1).

(ii) buying or selling to be by a dealer

(iii) buying or selling to be (a) for cash, (b) or for deferred payment, (c) or for other valuable consideration

(iv) (*New*) In regard to a works contract the total amount less a percentage for services or labour is turnover [T.R. 4 (3) (*New*).]

In determining the amount of turnover

I. the following shall be *included* :—

Sums charged for anything done by the dealer in respect of the goods (a) at the time of delivery, or (b) before delivery

II. the following shall be *excluded* :—

(1) any cash discount, or

(2) any other discount on the price allowed in respect of sale if conditions mentioned in T. R. 5 (1) (a) exist.

(3) any amount refunded in respect of articles returned by customers, if conditions mentioned in T.R. 5 (1)(b) exist.

(4) [(*new*) T.R. 5 (1) (g)] Freight Packing and delivery charges to be excluded.

(5) turnover of mere accommodating dealer¹ shall be excluded, if conditions mentioned in T.R. 5 (1) (c) exist.

(6) *see* also T.R. 5 (1) (h) and T.R. 4 (1) (d), (e), (f), etc.

1 The expression “accommodating dealer” is used for purpose of convenience.

III. proceeds of agricultural or horticultural² produce shall be excluded, if the produce is

(a) grown by a person, or

(b) grown on land in which the person has interest as (i) owner, (ii) usufructuary mortgagee, or (iii) tenant or otherwise³

Aggregate amount.—The total amount for which goods are either bought or sold, is the turnover. If goods are sold by S to A, B, C and D for Rs. 1,000 each, the aggregate amount of Rs. 4,000 represents the turnover of S.

Goods⁴.—It must be noted, that 'turnover' under this Act includes also, the price for which exempted goods are purchased or sold. The net effect of the provision is, that dealers must show the turnover, not only in respect of taxable goods, but also goods, which are exempt from tax under this Act.⁵

Sale of business as a going concern, is not to be included in the determination of 'turnover', though by such wholesale transfer, goods which form the stock-in-trade, may also be transferred.⁶ See Turnover Rule 5 (1) (h).

The amount however includes the amount for which articles manufactured by a person are sold,⁷ for, manufactured articles are also goods.

Inclusion of Sales Tax.—Sales turnover includes the sales tax collected by sellers from their purchasers. See under Sec. 3.

Bought by or Sold by.—The reference to the buyer's and seller's schemes of taxation.

Turnover in exchange.—Where a dealer sells a finished silver article receiving making charges and equivalent weight of silver the turnover is the making charges plus the price of silver got from the buyer.^{7A} See also T.R. 17-

2. The clause relating to exclusion of agricultural produce found place in the definition of the word "dealer" in the Bill in 1937. But when the Bill was introduced in the Legislative Assembly, the exclusion clause, was tacked on to the definition of the term "turnover". Certain verbal changes were introduced in the wording of this clause making the intention of the Legislature clear.

3. An amendment moved in the Legislative Council in 1939 to delete the words "grown by himself, etc." was lost.

4. See Sec.2(c) definition of the word 'goods'.

5. An amendment was moved in 1939 to insert the words "other than goods the sale or purchase of which is exempt from taxation under this Act"

after the words "goods" in the definition. The amendment was opposed by the Premier, on the ground that dealers must keep proper accounts even in respect of the turnover of exempted goods, so that Government may judge the exemption property. The amendment was negatived.

6. An amendment moved in the Legislative Council in 1939 to exclude such transfers was withdrawn on the assurance of the Premier, that the Act is not intended to cover such wholesale transfers.

7. An attempt in 1939 to exclude from this sub-section the proceeds of a sale by a manufacturer of the goods manufactured by him was unsuccessful in the Legislative Assembly.

7-A. See 1948 (1) M.L.J 161 (case under present Act) ..

Dealer.—See Section 2 (b) Turnover arises only when a person buys or sells on his own behalf. The term “Turnover” is inappropriate to what is done by an agent in the way of bringing together a seller and a buyer for commission.⁸

Cash or deferred payment See Section 2 (h).

Agricultural and horticultural income⁹

Agriculture is the science or art of cultivation of the soil “(Oxford Dictionary.” See also “Anderson’s Law Dictionary”).

Raising by expenditure of human care and attention, products from the soil as food for man and beast, is agriculture in its primary sense. Apart from food products, even raising other useful products from the soil by human effort, like cotton, jute, linen, flax, sugarcane, etc., is agriculture.¹⁰ Raising betel leaves is a process of agriculture. The raising of casuarina or timber trees is also a process of agriculture.¹¹ But if timber or casuarina is agreed to be severed before sale, it is movable property which is taxable. [(See Section 2 (c).] Coffee, cardamom, rubber and groundnut are agricultural produce.

Before 1st January 1948, tea was agricultural produce. But from 1st January tea is not agricultural produce for the purpose of this Act. See Section 2 (a).

Intervention of human agency is an essential ingredient. Spontaneous growth of timber, or forest or other trees without any human effort is not agricultural produce entitled to exemption.¹²

Agriculture includes horticulture. Pasturage is agriculture. But poultry farming, grazing of sheep, fishery¹³ and dairy-keeping are not agricultural operations for the purpose of the Act.

Produce of agriculture means that which is the “result of culture of the soil”¹⁴ Whether forest produce is agricultural produce see below.¹⁵

Interest as owner otherwise.—The condition precedent to the application of the proviso is, that the person who sells, must either have grown the produce, or it (the produce) must have been grown on land in which he has an interest. But, if the seller is one who has neither grown the produce nor interested in the land, the proceeds should be included in the turnover. Again, since the policy of the

8. 1947(2) M.L.J. 220 case under the present Act.

9. The present writer suggested deletion of the proviso. Small landholders and agriculturists with non-taxable turnover will be unaffected. The deletion would conduce to administrative convenience.

10. See 24 Mad. 421; A.I.R. 1922 Mad. 351.

11. In 1922 Mad. 351 it was so held but in 1931 Mad. 659 Reilly J. said that raising trees to form plantations of woods and forests cannot be agricultural process.

12. See 1946 I.T.R. 788. See also [1946] I.T.R. 356. [1947] I.T.R. 181 and A.I.R. 1945 Oudh 35.

[1947] I.T.R. 235.

13. A.I.R. 1932 Mad. 757; 1947. I.T.R. 245 and A.I.R. 1924 Cal. 668.

14. “Law Lexicon” (published by M.L.J. Office).

15. Provided there is intervention of human agency, forest produce is agricultural produce, otherwise it is taxable. See A.I.R. 1922 Mad. 325.

Act is to tax goods every time they are sold, even agricultural and horticultural produce would be subject to taxation, when it is sold by the purchaser of such produce. Thus, if paddy is sold by the actual producer to a trader, the act of sale by the producer is not subject to taxation, but if the produce is sold by the trader to his customers, it can be the subject of tax.

The lessee of forest produce like timber not having an *interest in the land* is liable to be taxed when he sells the timber.¹⁶

Where rent is payable in kind, produce given to the landholder by ryots is produce from land in which the landholder has interest and must be excluded. If, however, in lieu of rent a promissory note is executed to the landholder, and in repayment of the note, produce is given, or where a landlord for advances made, gets repayment in produce from the debtor, the produce is not agricultural produce from land in which the landholder has interest.¹⁷

But if a money-lender takes an usufructuary mortgage or lease of some villages¹⁸ and receives produce from the ryots, the produce so received is agricultural produce.

Agricultural or Horticultural produce out of land outside Madras Province

If such sale takes place outside the Province, the sale is outside the purview of the Act. If such produce is brought into the Province and sold, it is a matter not free from difficulty whether the amounts have to be deducted. The better view seems to be that deduction is permissible.¹⁹

Works Contract (New)

UNMETALLED ROADS—CONTRACT FOR

Where a contractor has to pay for the 'earth', he is taxable on the value of material impliedly sold. But if earth is merely dug by labourers from nearby pits belonging to Government or local bodies by labourers employed by the contractor who pays nothing for the earth dug, the contract is only one for labour or services and he is not taxable.

Differential Turnover

In the installation of machinery, buildings, etc., a larger proportion of the contract amount represents the value of materials, while in the construction of roads, a larger proportion of the contract amount represents value of services or labour²⁰.

16. A.I.R. 1930 Mad. 764.

17. See A.I.R. 1932 Mad. 436.

A.I.R. 1932 Ran. 19 (F.B.).

18. A.I.R. 1935 P.C. 172.

19. A.I.R. 1937 Mad. 745. "The case under a repealed provision of Income-Tax Act is no guide.

A.I.R. 1945 Mad. 114. Construing Income-Tax Act held Agricultural income means such income in British India.

20. See A.I.R. 1939 P.C. 235.

"Quantitative valuation of buildings."

[For conditions see Turnover Rule 5 (1) (c).] Here again accounts must disclose the name of the real seller selling to accommodate another dealer without stock.

Immediately means reasonably short time.²⁹ The object is to prevent evasion. If goods are not sold soon they may get mixed up with other stock and escape taxation.

Bad debts.—Bad debts or debts which a dealer is unable to recover are nevertheless to be included in the turnover.³⁰

[NEW]

(ii) '*works contract*' means any agreement for carrying out for cash or for deferred payment or other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property or the fitting out, improvement or repair of any movable property ;

Effect of Amendment of 1947

Where a contractor executes a work for a lump sum, there is an implicit sale of the goods used by him for the work. The object of this sub-clause is to define a "Works Contract". Clauses 2 (h) and 2 (i) (sale and turnover) have also been amended. The net effect is that the contractor is taxed on the value of goods used in the contract.

A similar provision is found in the Sales Tax Acts of Bengal, Bihar, Bombay, Central Provinces and Cochin.

Sub-section in relation to relevant rule

[See Sec. 2 (i), Gross Turnover in Works Contract and T.R.4 (3).]

COMMENTS

A works contract is a combination of some or all the three elements, movable property, immovable property and services in varying proportions. This Act can cover only sales of movable property. So provision is made for arriving at the value of movable property sale of which is implicit in the Works Contract. [See Section 2 (i).]

A Works Contract may basically relate to immovable property like Building, Road and Bridge or it may relate to movable property like car, radio and other movable articles. The nature of the work may be (1) construction, (2) fitting out, (3) improvement, or (4) repair. When a road is constructed or repaired, there is Works Contract with

29. An amendment moved to delete the word "immediately" was rejected by the Legislative Assembly. (Legislative Debates, Vol. XII p. 646).

See "Maxwell's Interpretation of Statutes" (4th Edition), p. 560.

30. An amendment which sought to exclude bad debts, from turnover was thrown out by the Legislative Assembly and the Legislative Council. (Legislative Debates, Vol. XII, p. 649).

taxable turnover. Equally when a car is repaired there is a work contract with taxable turnover. [Section 2 (i)].

Cash, deferred payment or valuable consideration.—*See* Section 2 (h).

Contractor as dealer.—*See* Section 2 (b).

Contractor place of business.—*See* Section 2 (b).

(j) “ Year ” means the financial year.

COMMENTS

Financial Year

Financial year means year from the 1st April to 31st March ³¹.

31, Sec. 3(10), Madras General Clauses Act.

[Sections 3 to 6-A.]

LIABILITY TO TAX, EXEMPTIONS AND MODIFICATIONS.**BEFORE AMENDMENT.****Liability to tax.**

3. (1) Subject to the provisions of the Act, every dealer shall pay in each year a tax in accordance with the scale specified below :—

(a) (i) If his turnover does not exceed fifteen thousand rupees. } Ninety-six rupees.

(ii) If his turnover exceeds fifteen thousand rupees but does not exceed twenty thousand rupees. } One hundred and forty-four rupees.

(b) If his turnover exceeds twenty thousand rupees. } One per cent of such turnover.

Provided that any dealer whose turnover in any year is less than ten thousand rupees shall not be liable to pay the tax under this sub-section for that year.

Provided further (1) that in respect of the same transaction of sale, the buyer and the seller shall not both be taxed, but only one of them, as shall be determined by the rules made in this behalf under sub-section (2), shall be taxed thereon, and (2) that, when the amount for which any goods were bought by a dealer has been included in his turnover, the amount for which the same goods were sold by him shall not be included in his turnover, for the purposes of this Act.

(2) The turnover for all the purposes of this Act shall be determined in accordance with and the tax shall be assessed, levied and collected in such manner and in such instalment as may be prescribed by the rules made by the Provincial Government in this behalf :

Provided that no rule for the determination of the turnover shall come into force unless approved by a resolution of the Legislative Assembly.

(3) Subject to any rules made under sub-section (2), the assessing authority may fix the turnover of any dealer in any year at the amount of his turnover in the previous year.

[AS AMENDED]

Levy of Taxes on Sales of Goods

3. (1) Subject to the provisions of this Act,—

(a) every dealer shall pay each year a tax on his total turnover for such year ; and

(b) the tax shall be calculated at the rate of *three pies for every rupee* in such turnover.

(2) *Subject as aforesaid, the sale of any of the goods mentioned below shall be subject to a tax at the rate specified in respect thereof, at such single point in the series of sales by successive dealers as may be prescribed : and the tax shall be paid by the dealer concerned on his turnover in each year relating to such goods, and shall be in addition to the tax to which he is liable under sub-section (1) on his total turnover for the year :—*

DESCRIPTION OF THE GOODS	Rate of tax for every rupee in the turnover relating to such goods.
(1)	(2)
(i) <i>Motor vehicles including motor cars, motor taxicabs, motor cycles and cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries.</i>	} Six pies.
<i>Chassis of motor vehicles</i> .. .	
<i>Component parts of motor vehicles</i> .. .	
<i>Articles (including rubber and other tyres and tubes and batteries) adapted for use as parts and accessories of motor vehicles, not being such articles as are ordinarily also used for other purposes than as parts or accessories of motor vehicles.</i> .. .	
(ii) <i>Refrigerators, and air conditioning plants</i>	

(iii) (a) *Wireless reception instruments and apparatus and component parts thereof, including all electrical accumulators, amplifiers and loudspeakers which are not specially designed for purposes other than wireless reception* } *Three pies.*
 (b) *Radio gramophones* }

(iv) (a) *Cinematographic, photographic and other cameras, projectors and enlargers; lenses and other parts of and accessories to such cameras, projectors and enlargers; and films, plates, paper and cloth required for use therewith* } *Three pies.*
 (b) *Binoculars and opera glasses* .. }

(v) *All electrical goods, instruments, apparatus and appliances, including fans and lighting bulbs, electrical earthenware and porcelain, and all other accessories.* .. } *Three pies.*

(vi) *Any pen, pencil, or pen and pencil set, sold for twenty rupees or more* .. } *Three pies.*

(vii) *All clocks, time-pieces and watches; and parts thereof* } *Three pies.*

(3) A dealer whose total turnover in any year is less than ten thousand rupees shall not be liable to pay any tax for that year under sub-section (1) or sub-section (2).

(4) For the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed :

Provided that no such rules shall come into force unless they are approved by a resolution of the Legislative Assembly.

(5) The taxes under sub-sections (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed :—

Provided that—

(i) in respect of the same transaction of sale, the buyer or the seller, but not both, as determined by such rules as may be prescribed, shall be taxed ;

(ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.

(6) Subject to such rules as may be prescribed, the assessing authority may assess a dealer for any year as if his transactions in such year had been the same as in the previous year.

Application of the Act

4. The provisions of Section 3 of this Act shall not apply to the sale of electrical energy, motor spirit as defined in the Madras Sales of Motor Spirit Taxation Act, 1939, tobacco in any form whether manufactured or not, and any goods on which duty is or may be levied under the Madras Abkari Act, 1886, or the Opium Act, 1878.

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[BEFORE AMENDMENT]

Exemptions from Taxation

5. Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees, the sale of bullion and specie, of cotton, of cotton yarn, and of any cloth woven on handlooms and sold by persons dealing exclusively in such cloth shall be exempt from taxation under section 3.

Sale of Hides and Skins

6. Subject to such restrictions and conditions as may be prescribed including conditions as to licences and licence fees, the sale of hides and skins, whether tanned or untanned, shall be taxed under section 3 only at such single point in the series of sales by successive dealers, as may be prescribed.

•

[AS AMENDED]

Exemptions and reduction of tax in certain cases

5. Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees—

(i) the sale of cotton, of handspun yarn and of any cloth woven on handlooms *wholly with handspun yarn* and sold by persons dealing exclusively in such cloth, shall be exempt from taxation under Section 3, sub-section (1) ;

(ii) *the sale of cotton yarn other than handspun yarn shall be liable to tax under Section 3, sub-section (1), only at such single point in the series of sales by successive dealers as may be prescribed and only at the rate of one half of one per cent of the turnover at the point ;*

(iii) *the sale of any cloth woven on handlooms wholly or partly with mill yarn shall be exempt from taxation under Section 3, sub-section (1), if the sale is to a wholesale or retail dealer in the Province, or if the sale is for delivery outside the Province and delivery is actually so made ;*

(iv) *the sale of bullion and specie shall be liable to tax under Section 3, sub-section (1), only at such single point in the series of sales by successive dealers as may be prescribed and only at the rate of one-fourth of one per cent of the turnover at that point.*

(v) *the sale of tea grown by the seller or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise shall be exempt from taxation under Section 3, sub-section (1), if the sale is for delivery outside the Province and delivery is actually so made ;*

(vi) *the sale of hides and skins, whether tanned or untanned and of newspapers, that is to say, of periodical works containing public news or comments on public news shall be liable to tax under Section 3, sub-section (1), only at such single point in the series of sales by successive dealers as may be prescribed.*

[NEW]

**Power of Government to notify exemption, and
reduction of tax**

6. (1) *The Provincial Government may, by notification in the Fort St. George Gazette, make an exemption, or reduction in rate, in respect of any tax payable under this Act—*

(i) on the sale of any specified class of goods, at all points or at any specified point or points in the series of sales by successive dealers; or

(ii) by any specified class of persons, in regard to the whole or any part of their turnover.

(2) *Any exemption from tax, or reduction in the rate of tax, notified under sub-section (1)—*

(a) may extend to the whole Province or to any specified area or areas therein ;

(b) may be subject to such restrictions and conditions as may be specified in the notification, including conditions as to licences and licence fees.

[NEW]

Liability to tax

6-A. *If any restrictions or conditions prescribed under Section 5 or notified under Section 6 are contravened or are not observed by a dealer, or in case a condition so prescribed or notified requires that a licence shall be taken out or renewed, if a licence is not taken out or renewed by the dealer or if any of the conditions of a licence taken out or renewed by him are contravened or are not observed, the sales of the dealer, with effect from the commencement of the year in which such contravention or non-observance took place, may be assessed to tax or taxes under Section 3, as if the provisions of Section 5 or of the notification under Section 6, as the case may be, did not apply to such sales and notwithstanding that a licence, if any, taken out or renewed by the dealer continued or continues to be in force during the year.*

TABLES

The following tables pointing out the changes introduced by the Amending Act of 1947. would be found to be useful.

OLD AND NEW SECTIONS

Taxation and Licensing with reference to tax and exemption points

(Sections 3 to 6).

Items	Prior Law [Old Section]	New Section	(Present Law) <i>In chain of sales excepted or exempt or taxed</i>
1. Goods (generally)	Section 3 taxed at 1% (all points).	Section 3 ..	Taxed at all points at 3 pies per rupee.
2. Goods specified in Section 4	Section 4 excepted from Act.	Section 4 ..	Excepted from Act.
3. Agricultural Produce, like coffee, paddy, etc, sale of— A. Grown by seller or in land in which seller has interest. B. Not grown by seller or in land in which seller has interest.	Section 2 (i) excepted in calculation of turnover. Section 3 taxed at 1% (all points) except A above.	Section 2 (i) Section 3 ..	Excepted in calculation of turnover. Taxed at all points at 3 pies in rupee.
4. Tea— A. Grown by seller or in land in which seller has interest.	Section 2 (i) (excepted in calculation of turnover).		

OLD AND NEW SECTIONS—(cont.)
(Sections 3 to 6—cont.)

Items	Prior Law [Old Section]	New Section	(Present Law) In claim of sales excepted or exempt or taxed
4 Tea—(Cont.)			
(i) Sale for delivery outside province	Sec. 2 (i) (excepted in calculation of turnover)	Section 5 (v)	Exempt from tax.
(ii) Sale in other cases	Do.	In view of Sec. 2 (a) (new) taxed.	Taxed at all points at 3 pies per rupee except (i) above.
B. Sale by one other than primary producer (other than grower, or person having interest in land).			
5. Cotton	Section 3 (Taxed at 1% (all points). Section 5 exempt if licensed otherwise taxed at 1% at all points.	Section 3 .. Section 5 (i) G.S.T.R. 5 and 6.	Taxed at all points at 3 pies per rupee. Exempt at all points if licensed or taxed at all points at 3 pies per rupee if not licensed or if licensee, etc., contravened (Section 6-A)
6. Handspun yarn	Section 5 exempt as part of cotton yarn if licensed. Otherwise taxed at 1% at all points.	Section 5 (i) G.S.T.R. 5 and 6.	Do.
7. Non-handspun cotton yarn (yarn other than hand-spun)	Section 5 exempt as part of cotton yarn if licensed, otherwise taxed at 1% at all points.	Section 5 (ii) T.R. 4 A (i) (new) and T.R. 5 G.S.T.R. 5 and 6.	Taxed at $\frac{1}{2}$ % at single point on first dealer with taxable turnover [T.R. 4 A (i) (new)] and exempt at other points if dealer is licensed or taxed at 3 pies per rupee if not licensed or if licensee, etc., contravened (Sections 6-A)

8. Handloom cloth wholly woven with handspun yarn	Section 5 exempt as part of handloom cloth if licensed otherwise taxed at 1% at all points.	Section 5 (i) G.S.T.R. 5 and 6.	Exempt at all points if dealer licensed or taxed at all points if not licensed or if licence, etc., contravened, at 3 pies per rupee (Section 6-A)
9. Handloom cloth wholly or partly with mill yarn...	{ Section 5 exempt as part of handloom cloth if licensed. Otherwise taxed at 1% }	Section 5 (iii) and T.R. 4-A (new) G.S.T.R. 5 and 6.	Exempt if licensed or taxed if not licensed or if licence, etc., contravened at 3 pies per rupee (Section 6-A).
(i) Sold to a wholesale dealer		Do.	Exempt if licensed or taxed if not licensed or if licence, etc., contravened at 3 pies per rupee.
(ii) Sold to a retail dealer		Do.	Exempt if licensed or taxed if not licensed or if licence, etc., contravened at 3 pies per rupee.
(iii) Sold for delivery outside the province		Section 5 (iii) G.S.T.R. 5 and 6.	Exempt if licensed or taxed if not licensed or if licence, etc., contravened (Section 6-A) at 3 pies per rupee.
(iv) Sold to actual consumer	Section 5 exempt if licensed, otherwise taxed at 1% at all points.	Section 5 (iv) T.R. 4-A (new) G.S.T.R. 5 and 6.	Taxed at 3 pies per rupee.
10. Bullion and specie	Do.	Do.	Single pointed tax at 1% if licensed payable by first dealer with taxable turnover. If not or if licence, etc., contravened taxed at all points at 3 pies per rupee.
11. Hides and skins	Section 6 single pointed tax at 1% if licensed; if not, taxed at all points.	Section 5 (vi) and T.R. 4 (2) (d) (e), T.R. 16 (5) G.S.T.R. 5, 6, 7, 8 & 12.	Single pointed tax at 3 pies in rupee and exempt at other points if licensed. If not or if licence, etc., contravened taxed at all points at 3 pies in rupee (Section 6-A).

OLD AND NEW SECTIONS—(concl'd.)
(Sections 3 to 6—concl'd.)

Items	Prior Law [Old Section]	New Section	(Present Law) In chain of sales excepted or * exempt or taxed
12. Newspapers	.. ..	Section 5 (vi) (T.R. 4-A) (New.)	On first dealer single pointed tax at 3 pies in rupee and exempt at other points. If not or if licence contravened, taxed at 3 pies in rupee at all points (Section 6-A).
13. Raw Jute—			Exempt by Notification 717.
(i) Sale for and actual delivery outside Province	Taxed at all points (practically 2 points) at 1%.	..	Taxed at all points at 3 pies in rupee.
(ii) Sale in other cases	Taxed at all points at 1%.	..	Taxed at all points at 3 pies in rupee non-taxable turnover is less than Rs. 10,000.
14. Vegetables and Fruits—			Taxed at all points at 3 pies in rupee
(i) Canned, preserved, dehydrated or dried	Taxed at all points at 1% Non-taxable turnover is less than Rs. 10,000.	..	Taxed at all points at 3 pies in rupee by Notification 715 if turnover is over Rs. 20,000. Between Rs. 10,000 to Rs. 15,000, the tax is Rs. 96. If turnover exceeds Rs. 15,000 but does not exceed Rs. 20,000, the tax is Rs. 144.
(ii) Other vegetables and fruits (fresh)	Taxed at all points at 1% Non-taxable minimum is less than Rs. 10,000.	..	Taxed at all points at 3 pies in rupee

N. B.—Before the Amending Act of 1947, two slab rates of tax of Rs. 96 and Rs. 144 were in force in regard to turnover exceeding Rs. 10,000 and not exceeding Rs. 20,000. The percentage rate of 1% operated when turnover exceeded Rs. 20,000. But under the Amended Act, the rate of 3 pies in the rupee operates when turnover exceeds Rs. 10,000.

SECTION 3 LIABILITY TO TAX

Effect of the Amending Act of 1947

There are two vital amendments. Firstly, the general rate of tax has been increased to roughly 1½% (3 pies in the rupee). Secondly, a single pointed additional tax on luxury articles is to be levied at varying rates on certain specified luxury articles.

The undermentioned is a comparative table of the prior and present Section.
Analysis of Old and New Section 3

	Clause of old Section.	Clause of New Section	Relevant rule
(1) Exemption limit	Proviso 1 to Section 3 (1).	Sub-section (3) of Section 3	....
(2) Rate	Sub-section (1) of Section 3 (1%).	Sub-section (1) of Section 3 (Three pies in rupee). <i>Omitted</i>	....
(3) Slab rates	Sub-section (1) of Section 3 (two slab rates up to Rs. 20,000). No.		....
(4) Additional single pointed tax on specified goods		Sub-section (2) of Section 3	T. R. 4 (B) (new).
(5) Determination of turnover according to Rules.	Sub-section 2 of Section 3	Sub-section (4) of Section 3	T. R. as amended.
(6) Approval of Turnover Rules by Legislative Assembly.	Proviso to Sub-section (2) of Section 3.	Proviso to Sub-section (4) of Section 3.	....
(7) Assessment, levy and collection according to rules.	Sub-section (2) of Section 3	Sub-section (5) of Section 3	T. R. as amended.
(8) Provision against double taxation of persons and transactions.	Proviso (further) to Sub-section (1) of Section 3.	Proviso to Sub-section (5) of Section 3.	....
(9) Taxing on turnover of previous year ..	Sub-section (3) of Section 3	Sub-section (6) of Section 3	T. R. as amended.

COMMENTS

See "ASSESSMENT" under "ANALYTICAL STUDY OF THE TAXATION LAW" INTRODUCTION and Sec. 9.

Subject to the Provisions of this Act.—Section 3 (1) is subject to the other provisions of the Act like Section 4 to 8. Thus the normal scheme of taxation is cumulative or *multi-pointed*. The exceptional schemes are: (1) a *single-pointed additional tax* on specified luxury goods [Section 3 (2)], (ii) a *single-pointed tax on specified goods* like bullion, and specie, hides and skins, non hand-spun yarn, etc., covered by licence as provided in Section 5, and (iii) other schemes of reduction of points of tax under Section 6 (*new*) if notified. Similarly, the normal rate of tax is *three pies* in the rupee. The exceptional rates are: (1) an *additional tax on luxury goods* at 3 or 6 pies in the rupee [Section 3 (2)], (ii) a *single-pointed tax* at 1/4 per cent. on bullion and specie and at ½% on non-handspun cotton yarn, (iii) other reduced rates if notified under Section 6.

Again, the normal scheme is to tax *all goods* at the point of sale or purchase. The exceptions are set out in Section 4 (excepted goods) and Section 5 (i), (iii) and (v) (export of certain goods, sales of handspun cloth, etc., covered by *licence*). Additional exceptions to this rule operate when a Notification is issued under Section 6 (*e.g.*, export of jute.—Notification No. 717).

Exemption limit.—The *normal exemption limit* is anything less than Rs. 10,000. So if the turnover is less than Rs. 10,000, no tax is payable. For instances of withdrawal of exemption limit, see Section 14-A (*new*) which provides that the agent of a non-resident must pay the tax irrespective of this exemption limit, and Section 8-B which provides for the dealer even within the non-taxable minimum turnover paying tax or taxes collected from customers to Government.

The actual turnover of a dealer is a matter peculiarly within the knowledge of a dealer within the meaning of Sec. 105, Evidence Act. So where it is shown that the total turnover of a dealer who acts also as a broker in certain transactions, is over Rs. 10,000, the onus of proving that the total turnover as a dealer excluding agency transactions is less than Rs. 10,000, is on the dealer.¹

Slab rates (Old).—Slab rate taxes of Rs. 96 and 144 apply only up to 31st December, 1947. Under the Amended Act, and notifications issued, slab rates apply only to fresh fruits.

Cumulative or Multi-pointed Tax.—Every time goods are sold they are taxable. The same goods are taxed as many times as they are sold. In this respect the tax system differs from the schemes in force in Bombay, Bihar and Bengal. (*See Introduction.*)

1. See 1948 (2) M.L.J. 93 (Case under present Act.)

Rate of Additional tax on Luxuries. 1-A—Additional tax of 3 *pies* in the rupee is leviable on Radio and Wireless goods, Photographic Goods, Electrical Goods, Pen, Pencil, Clocks, Watches, etc.

On Motor Goods,² Refrigerators, air conditioning plants, etc., the additional tax leviable is 6 *pies* in the rupee. A motor cycle is subject to enhanced rate. But an *ordinary* cycle is not a luxury article and is not subject to this additional tax.

The words "not ordinarily used for other purposes" and "specially designed" [Sub-sec. 2 (1) and (in) (a)] show that the enhanced rate does not operate if the accessories, etc., are not specially designed but are otherwise ordinarily used.

It must be noted that this additional tax is leviable in the case of pen, pencil or pencil set only when sold for Rs. 20 and more at a time. Obviously, if ordinary pencils or pens are sold for a few rupees, such small sales partake of necessities. Only costly pens, pencils and pen and pencil sets are luxuries.

This one-pointed additional tax differs from one-pointed tax leviable under Section 5.

Firstly, this tax is in addition to normal tax of 3 *pies* in the rupee while the reduced tax under Section 5 is an exception to the normal tax levy.

Secondly, in the case of levy of luxury tax the dealer is not licensed while in the case of the exceptional reduced tax under Section 5, the dealer must be covered by licence.

Luxury goods, tax point.—Under T. R. 4 (B) the *first taxable* dealer or first dealer not exempt from tax by reason of the turnover being less than the taxable minimum [Section 3 (3)] is liable to pay tax. The first *taxable* dealer's sale is the *taxable* point and at other points in the chain of sales, the articles are exempt from luxury tax though they continue to be subject to the ordinary tax of 3 *pies* in the rupee. If the first dealer has a non-taxable turnover, the second dealer if he has a taxable turnover or the first subsequent dealer with a taxable turnover is taxed as the first taxable dealer.

Turnover Rules—Approval by Assembly.—The Turnover and Assessment Rules were approved by the Assembly in 1939. The

1-A. The need for taxing luxury articles at a steep rate was pointed out by the present writer in the first Edition of this book and also communications to Government. Increase in normal rate to finance prohibition was also suggested by the present writer

2. The rate originally contemplated by the Government on luxury articles was 2 annas in the rupee. The Select Committee reduced the rate to a maximum of 6 *pies* in the rupee, as there

was real danger of trade in luxury articles shifting to adjoining provinces and States. For instance, on a car costing Rs. 10,000 a tax at the rate of 12½% would involve payment by the dealer of Rs. 1,200 as tax. But a purchaser could easily purchase his car outside the Province and evade the tax since the transport and incidental charges would not exceed Rs. 200 to Rs. 500. (Finance Minister's Speech in the Legislative Assembly on 1-12-47).

amendments to Rules necessitated by the Amending Act of 1947 were approved by the Assembly on 19th December 1947. The Rules were not, and need not be placed before the Upper House, according to this Act. But these rules also have to be published in the *Gazette* for four weeks and then for a fifth time in the finalised form [Section 19 (4) and (5)].

Assess, levy and collect.—The words show the different stages that pass before tax is actually realised “assess” means fix amount of tax. “Levy” means impose tax.

Provisions against double taxation.—The proviso is a safeguard against double taxation. The first part of the proviso provides, that the same *transaction* shall not be taxed twice over in relation to both the parties (seller and purchaser). The second part of the proviso is, that the same *person* shall not be taxed twice over.³ The rule can be illustrated as follows:—Suppose A, B and C are dealers under the Act and B *purchases* goods from A and sells them to C. The rules framed provide whether A or B shall be taxed on the turnover of the sale of the goods but both shall not be taxed, since the seller and purchaser shall not be taxed in respect of the same transaction of sale. If the price of goods is included in the turnover of B and taxed on *purchase* it shall not again be included in his turnover when he *sells* them to C. But C will be taxed on his purchase (the goods being in the buyer's scheme) and so on. But supposing the price of the goods is included in the turnover of A the seller and taxed on the seller's scheme, then B's turnover is not taxable in respect of his purchase from A, but his turnover is likely to be taxed in respect of his sale of the goods to C. But C will not be taxed in respect of his purchase⁴ and so on.

• TAXING ON TURNOVER OF PREVIOUS YEAR

Each year, any year, previous year.—Section 3 (1) makes it clear, that the tax every year is to be fixed with reference to the turnover for that very year. Unlike the Income-tax Act which provides for assessment being based on the income of the previous year⁵, the normal basis of assessment in this Act is the turnover of the year in respect of which the tax is levied. This is the rule. But sub-section (6) provides, that the assessing authority “may fix the turnover in any year at the amount of his turnover in the previous year.”

The object of sub-sections (1) and (6) of this section seems to be this. The tax on turnover shall not have retrospective operation. So only turnover after the coming into operation of the Act, is to be taxed. But, “for the sake of convenience the tax may be initially fixed on the basis of a turnover of a previous period”.⁶ So power is

3. For provisions as to relief from double taxation see Sec. 2(e), (iii) and Sec. 8. Still another provision against double taxation of goods is Sec. 4.

4. See Legislative Debates 1939 (Vol. XII, No. 8, p. 579).

5. A.I.R. 1934, P.C. 34.

6. Report of the Select Committee. (1939).

given to the assessing authority to fix the turnover in a year, with reference to the turnover of the previous year and if the turnover later on is found to be less than the turnover of the previous year, the excess would be refunded. Rules provide for matters relating to refund of excess tax collected, or for collection of excess tax due. (See Turnover Rules 6 to 12).

Previous year.—The year under this Act is the financial year and the 'previous' year referred to is the previous financial year. The Income-tax Act⁷ defines the 'previous year' as "the twelve months ending on the 31st day of March next preceding the year in which the assessment is to be made, or if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee, the year ending on the day to which his accounts have so been made up".

We will now consider some miscellaneous matters.

- (i) Liability of Dealers.
- (ii) Miscellaneous exemptions and non-exemptions.
- (iii) Miscellaneous deductions.
- (iv) Re-opening of Assessment

LIABILITY OF DEALERS

[See SECTIONS 2(b), 8 and 14-A]

An agent doing business on behalf of a foreign principal or non-resident principal and also independent business of his own cannot claim exemption unless the aggregate turnover is less than Rs. 10,000. It is immaterial that the turnover of either business is less than Rs. 10,000.

If a person acts as a dealer in some transactions and as a broker in other transactions on *prima facie* proof of the *entire* turnover being over Rs. 10,000, onus is shifted on the assessee to show non-liability on the ground of turnover as *dealer* (after separating agency transactions) being below the taxable minimum¹

Contractors are also liable since in respect of a Works contract there is implicit sale of materials used in the contract. See also "Introduction", Section 2 (h), 2 (i) and Turnover Rule 4 (3) (*new* sub-rule).

Practically all the goods used by contractors are on the seller's scheme.

Thus all persons mentioned in Section 2(b), as also agents of non-resident principals under Section 14-A and contractors are dealers and are liable. But an agent of a principal residing within the province

7. See 2(11), Income-tax Act.

is not a dealer. He may take out a licence under Section 8. But on the ground that he has not taken out a licence, he cannot be considered, as a dealer taxable under the Act^{7A}.

In respect of incapacitated persons, the guardian, trustee or agent, and in respect of business of administered estates, the Administrator-General, Official Trustee, or Receiver or Manager are liable (*See* G.S.T.R. 22 & 23.)

In respect of business in which a new partner is taken, the new partner is liable (G.S.T.R. 19). In fact, all partners are jointly and severally liable to pay tax (G.S.T.R. 19). In a dissolved partnership, the partners prior to dissolution (G.S.T.R. 20) and in the case of death the legal representatives of deceased dealers (G.S.T.R. 21) are liable.

On failure to notify discontinuance (G.S.T.R. 21) or dissolution of partnership (G.S.T.R. 20) the authorities may consider the business to be continuing and there is a risk of liability continuing. (*See* also under G.S.T.R. 20 and 21). Whether such failure is an offence—*see* Section 15 and G.S.T.R. 32.

Sales outside Province.—In regard to sales outside the Province no liability arises ^{7B}. [*See* Section 2 (*h*) and Section 2 (*i*) and T.R. 5 (2).]

Miscellaneous Exemptions and Non-Exemptions

[*See* SECTIONS 5, 6, 8 and T.R. 5 and COMMENTARIES]

Certain miscellaneous exemptions not covered by the above Sections are (i) Court, (ii) Crown, (iii) Fair Price Grains Shop, (iv) Standard cloth, etc.

Court Sales

Sales of moveable property by Court, whether in execution of a simple money decree or in execution of a decree on mortgage of moveables are not taxable. (Press Communique by Ministry).

Crown Sales (Sales by and to Government)

It is a principle of law that in the case of a taxing enactment even the Crown is bound unless exempted⁸.

But Government decided not to tax sales by any Department of the Government of India or Provincial Government. So sales of stamps by Government Treasuries directly or through licensed vendors and sales of Gold or Silver (bullion and specie by the Reserve Bank) are not taxable (*See* also Section 154, Government of India Act). For the same reason sales in refreshment rooms of State Railways are not taxable. Similarly, sales by Government Departments engaged in the

7-A. *See* 1947 (2) M.L.J. 220 (Case under the present Act).

7B. *See* pages 25 to 30. For cases relating to place of contract where parties meet, and where contract is by correspondence, *See* 32 Cal. 884 at pages 889 and 890.

27. Mad. 355; A.I.R. 1931 Cal. 659;

A.I.R. 1933 Mad. 764 (insurance acceptance).

8. A.I.R. 1935 Bom. 347.

production of industrial goods are not taxable. Government decided also not to tax sales to Central Government of Standard Cloth by mills as such sale was at cost price or even below cost price.

In November 1943, Government granted exemption from taxation to transactions by or on behalf of U.S.A. of Lease and Lend materials. But the exemption was later withdrawn with effect from 1st June 1945.

Fair Price Grains Shop and Ration shop.

The owner of a fair price grains shop is not a *dealer* since he has no profit motive. He is exempt from tax [See Section 2 (b) under "business"]. But the owner of a licensed ration shop is a dealer since he derives profit.

Exemption for Sale of Standard or Non-standard Cloth

The Government declined to grant exemption in respect of (a) retail sale of standard or non-standard cloth, (b) sale by mills of Standard or non-standard cloth, and granted exemption only in the case of sale of *standard cloth* by mills to the *Central Government* as such sale to the Central Government is at or even below cost price. [See also comments to Section 2 (b) under "Business".]

Certain Unexempt Goods

(i) Milk and Foodstuffs, (ii) Jewellery and (iii) Coffee

Milk and Foodstuffs.—Foodstuffs, milk, and articles of necessity are not exempt from tax. Even ration shop dealers were held liable to pay tax though they did not collect the tax from customers, the reason being that the price fixed was inclusive of Sales Tax. In Bengal and Bombay, foodstuffs and milk are tax-free goods and in the Punjab exemption is specifically granted to sales of foodstuffs (See Introduction and Appendix.)

Jewellery, Precious Stones, Silverware, Gold thread.—Jewels and precious stones are *not exempt* from tax. It must also be noted that they are not subject to luxury tax⁹. If jewellery, silverware and gold thread are manufactured and sent out of the Province, they are entitled to rebate [See Items 22, 41, 47 in Notification].

Coffee.—At the stage of sale by the primary producer, *viz.*, sale by the actual producer or by the person having interest in the land in which the produce is produced, coffee is exempt from tax and the proceeds of such sale are excluded in the calculation of turnover [Section 2 (i).] This is the law both before and after 1st January 1948. The law on this point, unlike tea, is unaffected by the recent Amending Act.¹⁰ At subsequent points of sale in the chain of sales, coffee is taxable. There is no need for any licence for dealing in coffee under this Act.

9. In the absence of effective land barriers, it was felt that a luxury tax on diamonds and other precious stones would be difficult to administer, since there are States and Provinces adjoin-

ing Madras. The proposal was therefore dropped (Finance Minister's Speech in the Legislative Assembly on 1-12-1947).

(10. See Foot-note on next page.)

Miscellaneous Deductions

[DEDUCTIONS GENERALLY, *See* T.R. 5]

Dharmam.—No exemption is allowable for money spent on charity.

Deduction for Sales tax paid.—Sales tax levied by a dealer and collected from his customer though separately shown by entries in bills is also part of the turnover (part of aggregate price for which goods are sold). So in calculating the turnover, no exemption is allowable for sales tax levied and collected from customers. (Instructions by Government to the above effect were issued to operate from 1-4-1944.) But under the Income-tax Act a general sales tax paid irrespective of whether there is profit or not should be deducted as a deduction under the head of business expense. (Central Government's instructions to Income-tax Authorities.)

Groundnut.—*See* T. R. 18.

Deduction of value of copra.—At present in the sale of cocoanut oil, no deduction is allowed of the value of copra purchased and converted into oil.¹¹

Re-opening of Assessment

See also G. S. T. R. 17 and 18—The principle of *res judicata* does not apply in respect of assessment made under the Act.¹² But, when an assessment has been made after due enquiry by an officer, it operates to create an estoppel by record and a succeeding officer cannot *arbitrarily* change the assessment though he is entitled to re-open the assessment within the limits provided in rules 17 and 18 (G. S. T. Rules).¹³ Till the time fixed for re-opening (Rules 17 and 18) in a strict sense, the assessment is not final.¹⁴

Modes of Recovery of Taxes, *See* Sec. 10.

ESCAPED ASSESSMENT AND RECTIFICATION

[*See* G.S.T.R. 17 and 18]

**Powers of Officers.
Duties of Assesseees**

{ *See* *Introduction*—"Analytical Study of the Taxation Law" and Sections 9, 13, 14 and G. S. T. R. 24 to 27.

10. As coffee is going into the hands of the Coffee Board which is under the control of the Government of India, it was felt that a tax at the stage of sale by the primary producer may indirectly amount to taxing the Government of India. So the Provincial Government decided to continue the *status quo* of not taxing it at the stage of sale by the primary producer. In view of the abolition of Coffee Control, the matter is likely to be re-examined. (Legislative Assembly Debates on 1-12-1947.)

11. In the Legislative Assembly an amendment to allow such deduction

was moved. On the assurance of the Finance Minister to have the matter examined by the Advisory Committee the amendment was not moved. (Legislative Assembly Debates on 19-12-1947.)

12. A.I.R. 1930 Mad. 209.

See also A.I.R. 1929 Mad. 453.

13. Cases under Income-tax Act.—

A.I.R. 1938 Cal. 537.

A.I.R. 1938 P.C. 175.

A.I.R. 1933 Rang. 350.

A.I.R. 1936 Rang. 219.

A.I.R. 1938 Lah. 867.

1939 I.T.R. 363.

14. A.I.R. 1939 Bom. 362.

SECTION 4

COMMENTARY

Legislative changes (1939).—This section was added by the Select Committee, in order to exempt goods which are already subject to taxation under other enactments. In one sense this section also embodies a rule providing for relief from double taxation.

Relation of Act and relevant Rules.—Deduction for sale of articles under Section 4 is allowed if separate accounts are kept—see T.R.5(1)(d).

A dealer or licensee dealing in taxable goods and also in goods falling under Sec. 4 must keep separate accounts. In the absence of separate accounts the deduction may be disallowed. See G. S. T. R. 12 (1).

Levy of duty on sale of electric energy.—Under Section 3 of the Madras Electricity Duty Act (1939), a duty at the rate of 6 pies per unit of electricity is leviable if the licensee has sold electricity at a price of more than two annas per unit.

Tax on sale to motor spirit.—The Madras Sales of Motor Spirit Taxation Act (1939) levies tax on petrol and motor spirit.

Tax on manufactured tobacco.—Section 4 of the Madras Tobacco Act of 1939 was repealed and Tobacco is now subject to Excise duty ¹.

1. The Madras Tobacco (Taxation of Sales and Licensing) Act, 1939 (Madras Act VIII of 1939), provided for the levy of tax on wholesale and retail sales of manufactured tobacco. The Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), provided for the levy of a sales tax on sales of tobacco other than manufactured tobacco. The former Act was amended in certain matters of detail during the Section 93 regime by Act. IV of 1940.

With effect from the 1st April 1943, the Government of India are levying an excise duty on tobacco under a Central Act, viz., the Tobacco (Excise Duty) Act, 1943 (Central Act X of 1943). In order to protect the tobacco trade from double taxation, the Government of India entered into an agreement with the Provincial Government as then constituted, by which it was agreed that the Provincial Government should withdraw all forms of Provincial taxation on tobacco, and that, in return, the Government of India should pay to this Government a sum of 22 lakhs of rupees per annum as compensation. This agreement came into force on the 1st April 1944, and Madras Act XII of 1944 was enacted by His Excellency the Governor to give effect to it. This Act repealed the Madras Tobacco (Taxation of Sales and Licensing) Act, 1939, and also suitably modified the Madras General Sales Tax Act, 1939. As Madras Act IV of 1940 and XII of 1944 would cease to be in force after the 30th April 1948, the Madras Tobacco (Re-enacting) Act, IV of 1948, was passed under which, pending further negotiation with the Government of India, regarding Provincial Government's share of revenue from tax on tobacco, the operation of Madras Act VIII of 1939 was suspended, so that the *status quo* may continue. In the event of a satisfactory arrangement not being entered by the Central Government, power is also available to cancel the suspension and revive the operation of Act VIII of 1939. (*Statement of Objects and Reasons*).

Levy of duties under the Madras Abkari Act.—The Madras Abkari Act levies duties on all kinds of liquor and intoxicating drugs, (e.g., toddy, spirits, beer, country liquor, etc.,) opium alone being excluded (Section 17 to 23 of that Act).

Taxation under the Opium Act.—Section 6 of the Opium Act empowers the Provincial Government to make rules subject to the payment of duty to regulate any of the following matters :—(a) possession of opium, (b) transport of opium, (c) importation or exportation of opium, (d) the sale of opium and the form of duties leviable on sale of opium by retail (Madras Opium Rules).

It must be noted that if goods are not exempt under Section 4, they are taxable on the turnover of their sales. Thus, electrical goods are not taxable under the Electricity Act but they are taxable on the turnover of their sales. Similarly, though spirituous liquors are exempt, medicines prepared from such liquors are taxable. Similarly, the dealer selling kerosene is taxable under this Act, since kerosene is not taxed under the Motor Spirit Taxation Act.

SECTION 5

[EXEMPTIONS AND MODIFICATIONS]

RELATION OF SECTION AND RULES

[See T.R. 4 (A). 5 (e) and G.S.T.R. 5, 6, 7, 8 & 12].

Restrictions and conditions.—For meaning of the words see Introduction.

' Prescribed ' Forms, etc.—See Section 19 (a), (b), (k).

Liability to pay licence fee.—All partners are jointly and severally liable to pay the licence fee (G.S.T.R. 19). On failure to notify discontinuance or dissolution the liability continues. (G.S.T.R. 20.) If a new partner is taken he is also liable to pay the licence fee.

Failure to take licence or contravention of licence or failure to pay licence fee

The results are these :

- (i) In all cases there is liability to pay sales tax, exemption being unavailable. [See 6-A; G.S.T.R. 7. See also " Assessment " " Licensing " under " Analytical Study of the Taxation Law ", Introduction.]
- (ii) In the absence of licence, there is a liability on the part of dealer to apply for 'penal licence' if so disposed [G.S.T.R. 6 (3)]
- (iii) Where licence is applied, but fee is not paid, there is liability for prosecution. [See 15 (b) and (d)].

Recovery of licence fee—modes of.

There are two modes :—

- (i) Prosecution (Sec. 15.)
- (ii) Suit (General Law, See Commentaries to Sec. 10)

Section 5 and Section 6, Differences.—Section 5 deals with Statutory exemption and modifications, while Section 6 deals with Governmental exemptions and modifications.

Difference between law before and after 1st January 1948.
(See Tables above)

Effect of amending Act are indicated also in the Commentaries below :

Accounts.—(See Section 13 and G.S.T.R. 11 & 12).—Licensee under Section 5 must maintain vouchers for stocks, deliveries, purchases, etc., and preserve them for 2 years. If besides dealing in goods under Section 5, the dealer deals in other goods taxable under Section 3, he must maintain separate accounts. Separate accounts are needed for goods taxed at differential rates. Accounts must show the names of vendors and vendees (See Condition in Forms of licence).

COTTON

[SEC 5 (i)]

Cotton is totally exempt if the dealer is licensed under this Act¹ (See also *Introduction, Analytical Study of the Taxation Law "Licensing"*). It is immaterial that the dealer is controlled under the Control orders if any issued by the Provincial or Central Government. If a dealer is not licensed under this Act or if the conditions or restrictions of licence under this Act are contravened, cotton is taxable on the seller's scheme at 3 pies per rupee (residuary Scheme T. R. 4) *For licence fees, etc.*, See *G. S. T. R. 5 to 8*. The exemption granted to cotton by this Act is unaffected by the Amending Act of 1947. Though cotton is exempt, cotton seeds are taxable.

YARN

Handspun or Otherwise

[SEC. 5 (i) and (ii)]

Handspun Yarn

[SEC. 5 (i)].

Yarn need not necessarily be of cotton. All kinds of handspun yarn are entitled to exemption both before and after 1-1-1948 [Sec. 5 (i).] So yarn spun from Charka is exempt from tax.

1. Originally exemption for cotton was granted with a view not to interfere with its export. In 1947, the Government proposed to withdraw the exemption. Objection was raised to the withdrawal of the exemption on the ground that the ceiling price both ex-mill and retail are fixed by the Government of India, and that tax on cotton would affect the distributive profits, and consequent distributive arrangements made by the Government of India. In view of the objection it was decided to continue the exemption for cotton (Legislative Debates on 1-12-47).

[SEC. 5 (ii)]

In view of the Amending Act XVI of 1948 passed in the Legislative Assembly on the 12th July 1948, non-handspun cotton yarn is now subject to one pointed tax.² This amended provision operates from 1st September 1948, the date fixed by His Excellency the Governor as the date from which Section 2 of Act XVI of 1948 operates. (See Notification I.) Corresponding Turnover Rule 4-A (1) has also been amended with effect from 1st September 1948. The working of this system is as follows:—If A, a wholesaler in this province, purchasing yarn directly from the Mills, sells to B, another wholesale dealer in yarn in this province, who in turn sells such yarn to C, a retail dealer, who in his turn sells to customers, the first dealer in this province (A) with taxable turnover is the taxable dealer and he is taxed at $\frac{1}{2}\%$ on his turnover of sale provided he is licensed under this Act. If the first dealer has a non-taxable turnover, the next subsequent dealer is taxed at $\frac{1}{2}\%$ provided he is licensed. The burden of proving that a prior licensed dealer has paid tax and a subsequent licensed dealer is exempt from tax is on the dealer claiming exemption. If any or all these dealers A, B or C, are not licensed the unlicensed dealer is taxed at 3 pies in the rupee notwithstanding the fact that he is not mentioned as the taxable dealer in the rules, and it is immaterial that a prior dealer taxable under the rules has been taxed^{2A}.

Prior law.

The tax law before the 31st March 1948 is unaffected by the Amending Act XVI of 1948. This is made clear by Section 3 of the Amending Act.

Before 1st January 1948.

Before 1-1-1948 all kinds of cotton yarn including mill-made yarn were exempt if dealer was licensed under this Act.

After 1st January 1948—during controls.

Under Act XXV of 1947, non-handspun cotton yarn (mill yarn) was taxable at two points at $\frac{1}{4}\%$ at each of such points.³ When the

2. The Madras General Sales Tax (Amendment) Act XVI of 1948 was passed by the Legislative Assembly on 12-7-48, and by the Legislative Council on 22-7-48. After assent of the Governor on 7-8-48, the Act was published in the *Fort St. George Gazette* on 10-8-48. The Provisions of the Act are as hereunder:—(Sec. 1.) This section shall come into force at once and Section 2 on such date as the Provincial Government may, by notification in the *Fort St. George Gazette* appoint. (Sec. 2.) In Section 5, clause (ii) of the Madras General Sales Tax Act, 1939, for the words "at two points", the words "at such single point" for the words "at the rate of one-fourth of one per cent", the words "at the rate of one-half of one per cent", and for the words "at each of the two points" the words "at the point" shall be substituted. (Sec. 3.) For the removal of doubts it is declared that tax on turnover for year ending the 31st March 1948, in so far as it relates to cotton yarn other than handspun yarn be levied under the said Act as if this Act had not been passed,

(See Foot-note next page)

Present Procedure for Collection of Sales Tax on Yarn.

As would be clear, in the case of yarn produced by a Mill *in this Province* and sold to a wholesaler, the Mill would be the first taxable dealer. In the case of yarn produced *outside this Province*, the purchasing wholesaler would be taxed when he *sells* to another wholesaler or retailer in this Province. As already discussed, the Mill in this Province, the wholesaler and the subsequent retailers have all to take out licences under section 5 of this Act.

The first taxable dealer pays the *tax* collected by him to Government. This tax is allowed to be passed on from one licensed dealer to another till it is finally borne by the consumer. So, barring the first taxable dealer, the subsequent dealers need not pay the taxes collected by them to Government, since they are not collecting any independent sales tax, but are only reimbursing themselves for the tax paid to the prior dealer or dealers.

The procedure has been made clear in the following press statement issued by the Provincial Textile Commissioner.

The procedure relating to the collection and passing on of the sales tax on the sale of yarn in the Province is as follows :

The liability of Sales Tax will be on the first dealer in this Province who had a taxable turnover. It will be either on the Mill or on the wholesale dealer who ever is the first dealer in this province. If the Mill is the first dealer, the sales tax collected by it, should be paid to Government and no other dealer need pay any sales tax in respect of this transaction if he possesses a licence issued under section 5 of the Madras General Sales Tax Act.

The wholesale dealer is permitted to collect the following items : (a) Ex-mill price ; (b) His profit of $3\frac{1}{2}$ per cent ; (c) Sales tax ; and (d) Transport charges.

The sales tax referred to as item (c) is the sales tax paid by him to his suppliers, namely the Mills and not the sales tax payable by him to Government. This item should be shown as "Sales tax paid to supplier" in the invoice and the amount shown under this head will not be collected by Government.

The same instruction applies to the retail dealers also who are authorised to collect the sales tax from the consumers showing it as "sales tax paid to supplier."

(Provincial Textile Commissioner's statement on 23rd December, 1948)

Amending Act of 1947 came into operation, yarn control was in force and the two points were fixed with reference to the Government of India Scheme for the distribution of yarn.

The taxation points in the chain of sales of licensed dealers (licensed under this Act) are : (i) A class licensee or ex-mill quota-holder, (or a person who received yarn directly from one or more Textile mills at a price not exceeding the maximum ex-factory price specified for the yarn by the Bombay Textile Commissioner), and (ii) B class licensee or wholesaler (T.R. 4-A *old*)⁴. - So both A and B class licensees under the Government of India Scheme got the benefit of low incidence of taxation ($\frac{1}{4}\%$) if licensed under this Act as well.² If the dealer was not licensed under this Act, the benefit was unavailable and the dealer was taxable at the rate of 3 pies in the rupee on the residuary seller's scheme (T.R. 4).

The C class licensee under the Government of India Scheme (retail dealer) was not taxable at all, for his sale was an exemption point in the chain of sales, provided he was licensed under this Act. If he was not licensed the exemption point was unavailable and he was taxed on the seller's scheme at 3 pies in the rupee.

2-A. To facilitate quick working of this one-pointed tax system under Section 5, and luxury tax under Section 3, it is desirable that a certificate be insisted signed by the dealer that has paid tax and the subsequent dealer claiming exemption from tax, to the effect that tax has been paid in respect of the goods concerned. False statement in such certificate may be made punishable under Section 15.

3. Section 5 (u) as amended by Act XXV of 1947, was as follows :—

(u) the sale of cotton yarn other than handspun yarn shall be liable to tax under Section 3, sub-section (1), only at two points in the series of sales by successive dealers as may be prescribed and only at the rate of one-fourth of one per cent of this turnover at each of the two points.

4. In regard to the payment of tax at two points the position was explained by the Textile Commissioner as follows :—

In regard to taxing cotton yarn produced by Mills in the Madras Province the following procedure will be adopted : (1) Where a quota-holder (A class dealer) receives physical delivery of yarn it will be distributed to sub-wholesale dealers (B class). Both A and B class dealers in this case will each pay $\frac{1}{4}\%$. (2) If in the interests of distribution it is found necessary to interpose a consignee, the quota-holder and the consignee only will be liable to pay the tax.

Bales received by diversion.—Where the bales are received by diversion and a consignee receives the yarn at ex-mill margin plus quota-holder's margin both the quota-holder concerned, if he is carrying on business in the Madras Province and the consignee will pay $\frac{1}{4}\%$ each. The sub-wholesale dealer will not be liable to pay any tax but will pass on what he pays to the quota-holder and the consignee will pass it on to retailers. In illustration of this if the quota-holder is outside the Madras Province the mills are being addressed to add sales tax also in the invoice sent to the consignee and pay it to Government.

Powerloom factories.—Powerloom factories with 25 looms and more are supplied yarn directly from mills at ex-mill rate plus quota-holder's margin. In this case, the mill will collect the tax from the consumer on behalf of the quota-holder and pay it to Government. A class dealers (quota-holders) concerned against whose quotas the deliveries are adjusted, should make the necessary entries in their books.

(Continued on next page)

In both the above classes of cases if the licensee contravened the conditions or restrictions imposed, he was taxable as a dealer at 3 pies in the rupee. See also "Licensing" under "Analytical Study of the Taxation Law", Introduction.

After lifting of Controls.

Consequent on the abolition by the Provincial Government of control over the internal distribution of yarn from the 16th March 1948, the B and C class licensees under the Government of India Scheme vanished and in a Press note on the 26th March 1948, Government ordered that the tax be collected only at $\frac{1}{4}\%$ from the ex-mill quota-holder or A class licensee.

From the 23rd April 1948, consequent on the further decontrol of yarn by the Central Government, A class licensees also vanished. Government thereupon decided to tax mill yarn at one point at $\frac{1}{2}\%$ and pending the passing of the Amending Act of 1948, for the purpose, and the coming into force of the Amending Act, Government directed that no Sales Tax at all be collected in respect of non-handspun cotton yarn from the 23rd April 1948.

4—Continued from previous page.

Cotton yarn produced by Mills in this Province

Consignments from States.—In regard to the payment of tax in respect of cotton yarn received from mills working in Pudukottah, Travancore (Alwaye), Cochin, Mysore and Bombay, some of the mills have quota-holders in our Province to whom they send the yarn. In respect of others, agents have been appointed who are A Class dealers, to pay for, take delivery of yarn at the mills premises and arrange for its transport to this Province. This yarn is received at ex-mill rate plus quota-holder's margin. Thus a part of the yarn from mills outside the Province is received at ex-mill rate while the balance is received at ex-mill rate plus quota-holder's margin. In respect of the former, i.e., bales received at ex-mill rates, the quota-holders to whom mills supply yarn and B Class dealers or consignees to whom they sell it will each pay $\frac{1}{4}$ per cent. As for bales received at ex-mill rate plus quota-holder's margin, where the quota-holder is a person residing outside the Province, the consignee and the sub-wholesale dealer should each pay $\frac{1}{4}$ per cent. Where agents of the Provincial Textile Commissioner are allowed to distribute the yarn direct to retailers, sales tax will be payable by them (agents.)

Yarn from Cochin Mills.—In regard to the yarn received from Cochin Mills, in view of the fact the profit margin of quota-holders is reduced from January 1, 1948, the quota-holders of Cochin Mills may pass on the tax to the person to whom they sell the yarn. Ultimately this tax also will be passed on to consumers with the result that in respect of Cochin yarn, the total sales tax to be borne by the consumer will be $1\frac{1}{2}$ per cent.

Madura Mills Yarn.—Sales of yarn by C Class dealers to A and B Class dealers take place only in respect of Madura Mills yarn, as the quota-holders of this mill have been permitted, as a special case, to sell yarn direct to C Class dealers with whom they had dealings in the basic period. In view of the difficulties pointed out, instructions are being issued to the quota-holders on the Madura Mills that they should not sell yarn direct to C Class dealers in future. (Textile Commissioner's Note on 12th January, 1948).

CLOTH WOVEN ON HANDLOOM.

[See 5 (i) and (iii)]

All cloth woven on handloom was exempt from tax before 1st January, 1948 if dealer is licensed under this Act.

Licence.—See G.S.T. R. 5 to 8 and “Licensing” under “Analytical Study of the Taxation Law” Introduction. A free licence is grantable to a dealer in handspun yarn. From 1st April 1948, a dealer in non-handspun cotton yarn has to pay necessary licence fees.

The table below would illustrate the limited nature of taxation from 1st January, 1948.

Cloth woven on handloom (Exempt from tax before 31-12-1947 if licensed under this Act).	
wholly with handspun yarn if licensed under this Act. Exempt from tax from 1-1-1948. [Section 5 (i)].	wholly or partly with mill yarn.
	sale for delivery outside Province with actual delivery. Exempt from tax from 1-1-1948 if licensed under this Act. [Section 5, (iii)]. If not licensed taxed.
Sale within Province.	
if licensed under this Act sale to wholesale dealer exempt from tax from 1-1-1948. [Section 5 (iii)]. If not licensed taxed.	if licensed under this Act sale to retail dealer exempt from tax from 1-1-1948. [Section 5 (iii)]. If not licensed taxed.
	both when licensed and when unlicensed sale to actual consumer taxed from 1-1-1948. [Sec. 3 residual tax].

Before 1-1-1948 sale of handloom cloth was exempt to whomsoever the cloth might be sold, and whatever may be the nature of the yarn used (handspun or mill spun), provided the yarn was woven on handlooms. The only restriction imposed was that the seller must be licensed. But after 1-1-1948 the exemption is narrowed down.

From 1st January, 1948, any dealer in cloth woven on handloom with *handspun* yarn, provided he is licensed under this Act and *deals exclusively* in such cloth (see G.S.T.R. 4) gets exemption in respect of his sales to whomsoever he may sell, *viz.*, to a consumer, or a wholesale dealer or retailer or an exporter. If he is not licensed or if though licensed he does not deal exclusively in such cloth, he is taxable on the sale price of cloth sold at 3 pies per rupee of turnover [seller's scheme (T.R. 4)]. Similarly, if terms of licence are contravened or are not observed he is taxable at 3 pies on the sales turnover. But a licensed dealer of handloom cloth woven *partly or wholly with mill yarn* is taxed when he actually sells to consumer, notwithstanding his licence. He gets exemption only when he sells to a wholesaler or a retailer or for export provided also, that he is licensed under this Act. So, sale to licensed handloom weavers' co-operative society and sale by such society to licensed retailers, are exempt from tax. Export of handloom cloth is not taxed with a view to avoid double taxation.⁵

In the case of handloom cloth *woven wholly or partly with mill yarn*, if the dealer is licensed under this Act, the sales to retailers, wholesalers and for delivery outside Province, are deductible from the total turnover and only the turnover of sale to actual consumer is taxable at the usual rate of 3 pies in the rupee. If, in the above case, the goods sold are not actually delivered outside the province, the sale is not exempt from tax. If the dealer is *not licensed*, or if the terms of licence are contravened the dealer is taxable at 3 pies per rupee, on the *entire turnover* without any deduction whatsoever.

Cloth woven on handloom with handspun yarn

The Government have ordered that with effect from the 1st April, 1940, the words "cloth woven on handlooms," occurring in Section 5 of the Act should be defined as "*any fabric made of fibrous material such as cotton, silk, wool or flax, which has been woven on a handloom and consequently has a structure of warp and wool.*"

The effect of the Amending Act of 1947 is that the exemption would continue to be available to handwoven fabrics made of silk, wool or flax (a kind of wiry erect-stemmed plant whose fibre is used for making linen thread) if the *yarn is hand-spun*.

5. Decision not to tax export of handloom cloth was taken in view of Central Government's Export duty levied on export of cotton cloth

(Finance Minister's Speech on 1-12-47). It must be noticed that in the Budget for 1948-49, Export Duty on cotton cloth was abolished.

Handwoven carpets and woollen and silk handwoven fabrics get exemption provided the yarn is handspun.

All-India Spinners' Association

The All-India Spinners' Association would continue to get exemption as only handspun yarn is used.

Dealing exclusively in such cloth.—For meaning of these words, see G.S.T. Rule 4. A person dealing in handloom cloth woven wholly with handspun yarn and also mill cloth cannot claim exemption while a grocery merchant dealing in such handloom cloth besides grocery business can claim exemption.

In the case of a firm whose head office and branch offices are situated in our Province, the entire firm with branches is a unit, and if one of the branches of the firm deals in cloth other than non-handspun handwoven cloth, the exemption under the section is inapplicable though the other branches and the head office deal only in handloom cloth woven with handspun yarn.

Licence. See "Analytical Study of the Taxation Law" Introduction.

BULLION AND SPECIE

[SECTION 5 (IV)]

Bullion is the mass of precious metal (gold or silver) before it is used for coinage. Specie is metallic money (Gold, Sovereign or Dollar) as opposed to paper money. Ornaments and other finished articles of precious metal cannot be covered by licence under this section. (See condition I of Form II.) In the case of bullion and specie, the turnover is unusually large while the profit is very low and the imposition of tax at the normal rate would, it was represented, practically drive out the entire business.

Before the 1st January, 1948, Bullion and specie were exempt from tax if the dealer was licensed under this Act⁶. From 1st January, 1948 Bullion and specie are taxed at one point at $\frac{1}{4}\%$, viz., sale by the first taxable dealer in the Province, if such dealer is licensed. In other words, suppose A, B, C and D are dealers who are licensed under this Act, if A has a taxable turnover, he is taxed at $\frac{1}{4}\%$ on sale and subsequent dealers B, C, D are exempt from tax. If A has no taxable turnover, B is taxable at $\frac{1}{4}\%$ and C and D are exempt.

6. Before the Select Committee in support of the plea to retain the exemption *in toto*, it was urged that the tax would affect prices and result in migration of this business to adjoining States. It was further urged that the proposed income from the tax would not exceed Rs. 14 lakhs a sum not commensurate with the administrative expenditure

involved. The Finance Minister who stood against the whittling down of the proposal to tax Bullion pointed out that the tax would only affect the rich who can bear the tax burden, and that having regard to the low incidence of tax, businessmen would find it easier to pay the tax than shift the business to adjoining States or Provinces.

If A is not licensed but has a taxable turnover, he is liable to pay tax at 3 pies in the rupee and B if licensed may get the benefit of low incidence of taxation. If in the above illustration B, C, D are not licensed under this Act, they have to pay tax at the normal rate of 3 pies in the rupee even though a prior licensed dealer A may have got the benefit of low incidence of taxation. In simple language, the principle is this. The benefit available under section (1) of exemption if a prior licensed dealer has paid tax, and (2) of low incidence of taxation at $\frac{1}{4}\%$ on *first* taxable dealer applies only to a dealer licensed under this Act. [T.R. 4-A (ii).]

The onus of proving that a prior licensed dealer has availed himself of the concession and paid tax and that consequently the dealer is exempt, is on the dealer claiming exemption. [T.R. 4-A (ii).]

Licence.—See “Analytical Study of the Taxation Law” Part V (d). Introduction and G.S.T.R. 5 to 8.

TEA

[SECTION 5 (v)]

Before the 1st January 1948, the primary producer of tea was exempt as tea is agricultural produce under the general law. As agricultural produce, the proceeds of sale by the actual *producer* (Owner of a Tea Estate) was not included in the calculation of turnover. [Section 2 (i) proviso.] But when the purchaser of tea from the primary producer resold, he was liable to pay the tax for, at subsequent stages tea was subject to the multi-pointed tax system. From the 1st January 1948, tea for purpose of this Act ceases to be agricultural produce [Section 2 (b)] and it is taxable like other goods, the only exemption allowed being where the sale is by the primary producer (seller being producer or person having interest in land in which it is produced) for export⁷ and where in pursuance of such export, the goods are actually delivered outside the Province [Section 5 (v)]. But sale of tea by a person other than the primary producer is not exempt⁸ even if the tea is exported.

Note that no licence is necessary for a dealer in tea under this Act.

Interest—as owner or otherwise. See Commentaries to Section 2 (i).

7. Export of Tea is exempted, having regard to competition in the International market (Finance Minister's speech on 1-12-47.)

8. It was contended that tea is subject to heavy taxation in the shape of Excise duty, Export duty and Central Income Tax and that the taxing of this popular beverage in these days of food scarcity would reduce consump-

tion and prejudicially affect the health and happiness of people. The Finance Minister pointed out that tea is not a food crop but a commercial crop and that the addition at the producer's end of one more link in the chain of taxation would not prejudicially effect production or consumption. (Finance Minister's speech on 10-10-1947, 15-10-1947 and on 1-12-1947).

HIDES AND SKINS

[SECTION 5 (vi)]

Hides and Skins.—The terms comprehend both raw and dressed skin. Raw hides are converted into leather in a tannery by soaking in tannic acid.

Hides and skins may be *sold* in the Province or *exported* from the Province. Such sale or export may be before or after being tanned in the Province.

Similarly, hides and skins may be imported into the Province. They may be tanned outside the Province and imported or imported into the Province and then tanned in a tannery in the Province.

Shoes

If after the stage of tanning, products like shoes are manufactured and sold, instead of mere dressed skin, the finished products are taxable in the seller's scheme (T.R. 4). If the finished product like leather is exported, the article is entitled to rebate (item 25 in Notification V).

TAXATION OF HIDES AND SKINS

[T.R. 4 (2) (d), (e) ; T.R. 5 (i), (e) ; T.R. 16 (5) ;]

[G.S.T.R. 7; SECTION 5 (vi).]

A dealer in hides and skins may be licensed under this Act or unlicensed.

I.-Unlicensed Dealers

An unlicensed dealer may deal *exclusively in hides and skins* or he may deal in hides and skins and other goods as well.

(i) **Dealing exclusively in hides and skins.** An unlicensed dealer is taxable on the *sales* turnover of the skins sold [seller's scheme [T.R. 4 (1)], the modification of one pointed taxation being inapplicable. So, whether raw or tanned the cumulative rule of taxation applies and every time an unlicensed dealer sells he is taxed. [T.R. 16 (5) and T.R. 4 (1).] The only exemptions available are the minimum limit of Rs. 10,000 and non-taxability twice over in respect of the same transaction—exemption available to all dealers. [Section 3 (3).]

(ii) **Dealing in all goods including hides and skins.**—Such a dealer must pay tax on the *entire* turnover including sales of hides and skins, the benefit available to licensed dealer of inclusion of only that amount which would be liable to single pointed taxation and the exclusion of all other amounts relating to hides and skins, being unavailable to him. [T.R. 5 (1) (e).] As already stated only the exemptions available to all dealers [Section 3 (3)] would be available and the cumulative tax system operates.

II.—Licensed Dealers

(LICENSED DEALER AND LICENSED TANNER)

[T.R. 5 (1) (e) and T.R. 16]

(i) Dealing exclusively in hides and skins.—

(a) **Import of untanned skins.**—A licensed dealer is not taxable at the stage of *purchase* outside the Province and import since the goods would pass to the *tannery* and get taxed. [T.R. 4 (2) (d) is inapplicable to purchases outside the Province.]

(b) **Import of tanned skins.**—When skins are *tanned* outside the Province and imported, the *first seller* in the Province with *taxable* turnover is taxed, and in the further chain of sales, the goods are not taxable. [T.R. 16 (4)]

(c) **Sale of untanned skins to tannery.**—When sold to a licensed tanner, in the Province, the goods (untanned skins) are taxed on *purchase* turnover of the purchasing tanner and thereafter no further tax is leviable. [T.R. 16 (2) (i) and T.R. 4 (2) (d).]

(d) **Export of untanned skins.**—When untanned skins are exported, outside the province, the *last dealer* purchaser with *taxable* turnover in the province, is taxed on the amount of *purchase* (buyer's scheme). [T.R. 16 (2) (ii) and 4 (2) (e).]

(e) **Export of tanned skins.**—When tanned skins are exported, since the tax is already payable by the purchasing tanner, no further tax is payable. If, however, the tanner was without taxable turnover, the *first subsequent seller* with taxable turnover is taxed on the turnover of sale (seller's scheme). [T.R. 16 (3).]

(ii) **Dealing in hides and skins and other goods as well.**—If a dealer deals in other goods as well and takes out a licence in respect of hides and skins, then what would be included in turnover in respect of transactions of hides and skins, is only those amounts which would be liable to single-pointed tax [see (a) to (e) above] and all other amounts would be excluded. [T.R. 5 (1) (e) and T.R. 16.]

Monthly submission of Return and Monthly payment of tax.—Hides and skins are subject to monthly submission of return system and monthly payment of tax system (T.R. 15). (See Section 9.) See Tables appended to "Assessment", "Licensing" under heading Introduction, "Analytical Study of the Taxation Law."

Licensed dealer selling waste products.—If a licensed tanner who has already paid tax on untanned skins, sells waste products in tanning like wool, hair and horns, such sale is not taxable.

Separate Accounts.—Dealers have to keep separate accounts in regard to hides and skins, tanned within the province, and outside the Province. [See Licence Form IV and G.S.T.R. 12 (2) and Commentary to Section 13.]

NEWSPAPERS

[SECTION 5 (vi)]

Before 1st January, newspapers were subject to taxation at two ends, *viz.*, at the production headquarters and at the place of distribution. In other words, newspaper proprietors as *sellers to agents* were taxed while agents were also taxed as *sellers to subscribers*.

From the 1st January, 1948 newspaper agents are exempt from payment of tax. The tax is to be levied only at the production headquarters⁹.

T.R. 4-A (iii) provides that if the *first taxable* dealer in this Province has paid tax the subsequent dealers are exempt. If, in production headquarters, no tax has been paid, the agent as the subsequent dealer with taxable turnover may be liable. The burden of proof of exemption is on the dealer claiming it.

Only periodically published journals—journals published at regular intervals containing news information or tidings of a *public* nature are subject to the *one pointed tax*. Legal, sporting, philosophical or religious journals are not newspapers and they may not be entitled to the concession available under this section unless they give also current news or public news or comments on public news.

It must be noticed that the payment contemplated is by the first taxable dealer in this Province. So in the case of newspapers whose production headquarters are outside the Province, as for example the *Hindustan Times* (Delhi), the agent in this Province of the newspaper is the *first* dealer. The tax cannot be paid at the *production* headquarters in Delhi. But if the first chief agent pays tax, the sub-agents who distribute in the mofussil are exempt.

Note that there is no provision for licensing Newspaper dealers in the rules.

SECTION 6 (NEW)

GOVERNMENTAL MODIFICATIONS

Object of Section 6.—As a result of the representations by the merchants and Chambers of Commerce, this provision was inserted so that Government could have this power to go into individual hardships of specified articles or transactions in particular localities and give relief by notifying reductions and exemptions.^{9A} Government

9. Newspapers claimed total exemption. They pleaded that such a tax would amount to taxing knowledge, and that the tax cannot be passed on to consumers. As an alternative a tax on advertisement space in newspapers was suggested. As tax on advertisement space cannot be included in Sales Tax on goods, it was decided to continue

the tax at least at the producer's end. (Legislative Debates on 1-12-47). For exemption for newspapers, Religious books etc., see Appendix.

9 A. Provision analogous to this section is found in Sales Tax Acts in Cochin, East Punjab, United Provinces, etc. See Appendix.

has constituted an Advisory Committee¹⁰ to examine all cases of exemption placed before it so that the powers may be used by the Government without discrimination, favouritism or hardship (Finance Minister's reply in Legislative Assembly on 1-12-1947).

Nature of power.—Power is available only to notify exemptions, modifications or reductions. The power is of a comprehensive nature applying to (i) all or specified classes of goods, (ii) all or any points of taxation, (iii) all or specified classes of persons, (iv) entire turnover or part thereof, and (v) specified area in Province or entire Province. Government have however no power to enhance the rate.

Under the notifications hitherto issued no provision is made for licences.

Modification in British Cochin.—It was represented that the firms in British Cochin find it unprofitable to continue their business as their foreign trade is adversely affected by the enhancement in the general rates of Sales Tax to 3 pies in the rupee, while it continues to remain at one per cent in the surrounding Cochin State territory. The Government therefore reduced the general rate of Sales Tax in British Cochin from 3 pies per rupee to the old rate of 1 per cent of turnover with effect from 1st August. [See under Notification IV.]

Fresh vegetables and fruits.—For 1947-48 and for all years thereafter the slab rates of Rs. 96 and 144 are retained where turnover is over Rs. 10,000 and below Rs. 20,000 according as the actual turnover exceeds or falls below Rs 15,000. The normal rate of 3 pies is applied only if turnover exceeds Rs. 20,000. [See Notification IV].

Mill cloth.—In respect of mill cloth sold by "Representative buyer," rate was reduced to $\frac{1}{2}\%$ from 1-1-48 by a Notification. But the notification was cancelled with effect from 20-1-48. [See Notification IV.]

Jute.—Jute is totally exempt if delivered outside Province.

Accounts.—(See G.S.T.R. 12 and Section 13).

10. To advise the Government on the working of the Sales Tax Act an Advisory Committee composed of the following members has been constituted :—

Messrs. K. Venkataswamy Naidu, G. Venkata Reddi, and S. Jayaram Reddy, members of the Madras Legislative Council; Messrs. Guntur Narasimha Rao, N. M. R. Subbaraman, C. M. Kothari, B. W. Batchelor, Hassan Koya and Mrs. Kuttimalu Amma, members of the Madras

Legislative Assembly; and Messrs. S. Anantaramakrishnan, B. N. Reddi, V. Pandurangiah, Batsu Venkateswaralu, M. N. Aswathiah and Mr. Nasir Hussain.

Mr. B. Gopal Reddi, Finance Minister, who is in charge of Commercial Taxes, is the Chairman of the Committee and Mr. H. Sitarama Reddi, Minister for Industries in charge of Commerce, is the *ex-officio* member.

Oil Industry.—

• In the case of a single country chekku, if the dealer is licensed, exemption from sales tax is allowed for all products, oil, oil cake, etc., for the limited period of one year 1948-49. (Notification 1336 in list IV). The exemption is available whatever may be the nature of the produce, groundnut oil, and cake, cocoanut oil and cake, or castor oil, etc. It is unavailable if more than one chekku is used, or if an oil mill is used, or if the dealer is unlicensed or if, though licensed, he contravenes the conditions of licence, by collecting sales tax, etc. (See condition 4 of licence. See also section 6-A).

It may be noticed that a limited concession is allowed in the nature of deduction in turnover for a registered dealer in groundnut oil and cake (See T.R. 18, page 194). This deduction is, unlike Notification 1336, irrespective of the number or nature of machinery used, chekku or oil mill, though its operation is limited to groundnut oil and cake.

The larger concession by exemption from tax (Notification 1336) does not abrogate the concession under T. R. 18, but is an additional and larger concession.

SECTION 6-A

[NON-OBSERVANCE OF CONDITIONS]

On infringement of the conditions of licence or restrictions imposed, (under Section 5 or 6 or notification under Section 6), this comprehensively worded section statutorily provides for the application of Section 3, *viz.*, levy of normal tax of three pies in the rupee, or additional luxury tax if the additional rate is also applicable. However slight the infringement may be, this section operates.

This section sets at rest all doubts as to whether on breach of the conditions of Section 5, etc., the impugned transaction is taxable.

This section comes into play if licence is not taken (under Section 5 or Section 6 if notified), or renewed or if the terms or conditions of licence or restrictions imposed by Section 5 or notification are either positively contravened or even if negatively they are not observed.

The infringement is retroactive in effect and the dealer is taxable from the beginning of the financial year to the close of the year and thus the benefit of any concession otherwise available ceases to be available, and is deemed to be withdrawn for the *entire* year.

Absence of or contravention of licence [See G.S.T.R. 7].—The relevant rule also provides that the benefit of Section 5 is available only to transactions carried on according to the conditions of licence. In the absence of a licence or when the conditions of licence are contravened, the dealer becomes a taxable dealer.

Defective Accounts.—If accounts of licensees are defective, as for instance, if accounts do not show the names and addresses of sellers and purchasers (Forms II, III and IV) the conditions of licence are contravened. Section 6-A consequently operates and the benefit of licences becomes unavailable.

Absence of separate accounts (licensee under Section 5).—In the absence of separate accounts as required by G.S.T.R. 12 the exemption or benefit of Section 5 is unavailable.

Non-payment of licence fee (Section 5).—[See G.S.T.R. 6 (11) (d).]

If licence fee is not paid exemption or benefit of Section 5 is not claimable, and is suspended till such licence fee is paid. The transaction becomes taxable under the general scheme till such payment.

Section 8, (contravention of licence).—There is no reference to Section 8 in this section, thus implying that contravention of Section 8 or of the conditions of licence under Sec. 8 does not necessarily involve the operation of Section 3. The exemption may be unavailable when there is a failure to take out a licence, or when accounts are not maintained in Forms X and XI, or when the conditions of licence are

not observed, or when separate accounts (G.S.T.R. 12) are not kept. (See Section 8 and G.S.T.R. 7.) Though exemption is unavailable, the person does not become a dealer. (See under Section 8 "Scope of section" and also Sections 2 (b) and 14-A.)

Restrictions and conditions—Meaning of terms. See Introduction.

Prescribed.—See Section 2 (f) and Section 19.

Notified.—See Section 2 (e).

Licence, renewal of.—See G.S.T.R. 6.

Contravention or non-observance.—The former is indicative of a positive act while the latter indicates a negative passivity when a positive act is called for.

Year.—Financial year [See Section 2 (j)].

Tax or Taxes.—Reference is to normal sales tax and luxury tax if such tax is payable.

REBATE

(Sales of certain goods for delivery outside the province.)

7. In respect of such finished articles of industrial manufacture as may be notified by the Provincial Government, and subject to such restrictions and conditions as may be prescribed, a rebate shall be allowed of one-half of the tax levied on sales of such articles for delivery outside the province, if such articles are actually so delivered.

Legislative changes.—This Section was added by the Select Committee in 1939.

SECTION AND RELEVANT RULE

III. A rebate is allowed of one-half of the tax.

- (i) Rebate is allowed only in respect of finished articles of industrial manufacture.
- (ii) The articles entitled to rebate are notified by the Provincial Government (Notification II).
- (iii) Rebate is allowed only if the articles are manufactured in the Province and are actually delivered outside the province.

Procedure and conditions.—G.S.T.R. 9 and 10.

List of Articles entitled to rebate.—See *Notification V*.

Application for Rebate—No stamp needed.—See *Notification VI*.

Procedure in Applying.—Application must be in Form VIII. It must be made within three months of delivery. Dealers entitled

may apply. It seems proper that the head office should apply in the case of a firm with branches though there is no specific rule. Application must be made to the assessing authority [*See 2 (A-I)*].

Allowing rebate.—G.S.T.R. 10 provides for the issue of a refund order, or adjustment of sum repayable on final checking, after the authority is satisfied that rebate is admissible.

Contents of Form.—Persons to whom sales are made must be specified. *See Form VIII.*

Satisfying admissibility of rebate.—For satisfying themselves the authorities may exercise powers under G.S.T.R. 24, 26 and 27 and also under Section 14.

Appeal against orders of authorities regarding rebate.—*See* Section 11 and G.S.T.R. 13 (1).

Powers of appellate authority.—G.S.T.R. 13 (6) and 27.

Revision.—*See* Section 12 and G.S.T.R. 14.

Rebate.—The term means “reduction in the amount or discount.”

Finished articles.—The words “finished articles” are often used as opposed to raw material. The term ‘finished’ connotes a completion in the process of manufacture. A partially finished article or raw material cannot come under this section. Even finished products manufactured by cottage industries, are entitled to rebate, if they are notified by the Provincial Government¹.

For delivery outside the province.—All sales of finished articles notified by the Government are entitled to rebate if the articles are exported outside the province.²

Delivery.—Delivery is the voluntary transfer of possession from one person to another.² Mere transfer of title is insufficient to claim exemption. Possession also must be transferred.

Actually so delivered.—Delivery to the carrier or wharfinger or other forms of symbolic delivery are also sufficient to attract the operation of the section.³ The Legislature is anxious to see, that to claim exemption, the articles exported are clearly taken outside the province so that they may not compete with the articles within the province which are not subject to rebate.

Jewellery, Silverware and Gold thread.—*See* rebate items, 22, 41 and 47 in list in Notification V.

1. Amendment to exempt all sales of finished articles for delivery outside the Province was rejected.

2. S. 2(2), Sale of Goods Act.

3. Rules relating to delivery, *see* Sec. 33-39, Sale of Goods Act.

SECTION 8

[BEFORE AMENDMENT]

Licensing and Exemption of Agents.

8. The Provincial Government may, on application and on payment of such fee as may be prescribed in that behalf, license any person under this section who for an agreed commission or brokerage buys or sells on behalf of known principals specified in his accounts in respect of each transaction and may exempt from the tax under Section 3 such of his transactions as are carried out in accordance with the terms and conditions of his licence :

Provided always that, save where the transaction consists of a sale by a grower of produce grown by him or on his land, no such exemption shall be given unless the amounts for which the goods concerned in such transactions are sold, are included in the turnover of the principals or of the dealers from whom purchases were made, or would have been so included but for an exemption provided under this Act.

SECTION 8

[AS AMENDED]

LICENSING AND EXEMPTION OF AGENTS.

8. The Provincial Government may, on application and on payment of such fee as may be prescribed in that behalf, license any person under this section who, for an agreed commission or brokerage, buys or sells on behalf of known principals specified in his accounts in respect of each transaction and may exempt from the tax or taxes under Section 3 such of his transactions as are carried out in accordance with the terms and conditions of his licence :

· Provided always that, save where the transaction consists of a sale by a grower of produce grown by him or on his land, no such exemption shall be given unless the amounts for which the goods concerned in such transactions are sold, are included in the turnover of the principals or of the dealers from whom purchases were made, or would have been so included but for an exemption provided under this Act.

Provided further that the commission or brokerage agreed upon and specified in the accounts represents the entire remuneration payable to the agent, apart from legitimate incidental charges actually incurred by him and specified in the accounts, in respect of insurance, transport, loading and unloading, godown rent, interest, correspondence, telegrams, the use of the telephone, and the like :

Provided also that the burden of proving that a transaction is exempt, by virtue of this section, from the tax or taxes payable under Section 3, shall be on the licensee.

Legislative Changes, 1939. This section was added by the Select Committee. Some changes were introduced in the Legislative Assembly to make the object of the section more clear.¹

Effect of Amendment of 1947

With the introduction of a higher rate of tax for luxury articles [Section 3 (2)] the exemption is made to cover licensed agents of principals dealing in those articles also. Hence the use of words "or taxes."

Secondly, the onus of proof of a transaction being exempt, is laid on the licensee.

Thirdly, it is provided that commission payable to and incidental charges incurred by an agent must be specified in accounts and that the commission alone must be the sole remuneration payable to the Agent.

For discussion of reasons for Amendment of 1947 making Section 8 strict, see foot-note 3 to Commentaries to this Section, and foot-note 29, in Section 2 (b) and Section 14-A (*new*).

Scope of the section.—The section may be contrasted with Section 14-A. By implication this section providing for exemption applies to agents of principals residing within the Madras Province. This section has to be read with Section 3 (5) proviso. The benefit of exemption under this section would be available, if either the principal has been taxed, or is exempt from tax under Section 3 (3) and (5) provisos or Sections 4 and 5.

Difference between Section 8 and Section 14-A.—Section 14-A provides for taxation of agent where the principal cannot be taxed, while Section 8 provides for exemption from taxation where the principal has been taxed. Section 14-A deals with an agent whose principal is not amenable to the jurisdiction of the Act while Section 8 deals with an agent whose principal is amenable to the jurisdiction of this measure. Section 14-A applies where agent alone is doing business within this Province, while Section 8 applies where both are within this Province.

SUMMARY OF SECTION AND RELEVANT RULES

This is one of the difficult Sections in the Act.

(1) Licensing Authority [See G.S.T.R. 5 (2) and Introduction.]

1. The Punjab Sales Tax Act also contains similar provision exempting Agents.

(2) Fee and conditions of licence (*See* G.S.T.R. 5, 6, 7.)

(3) Power of licensing is exercisable by the licensing authorities. The effect is twofold.

(A) Firstly, the effect is to licence a person if—

- (i) he (a) sells goods in regard to goods taxed in seller's scheme, or (b) buys goods in regard to goods taxed in buyer's scheme, the following being the conditions.
- (ii) such act is done by the agent for commission or brokerage;
- (iii) such commission or brokerage is agreed ;
- (iv) (*new*) such agreed commission or brokerage is specified in the accounts ; and
- (v) (*new*) such agreed commission or brokerage represents the entire remuneration payable to the agent ;
- (vi) incidental business charges incurred by the agent exclusive of the sole commission are specified in accounts ;
- (vii) the act of agent is on behalf of principals who are known and specified in the accounts of the agent ;

(B) Secondly, the effect of such licence is to exempt the person from tax or taxes under the Act in respect of transactions carried on in accordance with the terms of licence.

(4) The exemption from taxation is allowable only if transactions on behalf of principals relate to—

- (i) sale of produce if the sale is on behalf of growers of produce grown by them (Principals) or on their (Principals,) lands, *viz.*, lands in which the principals have interest.
- (ii) other transactions in which—
 - (a) the turnover of sale is included in the turnover of principals

or

- (b) would have been included but for exemption provided in the Act.

(5) (*New*) The onus of proving that a transaction is exempt from tax by virtue of licence is on the licensee.

RELATION OF SECTION AND RELEVANT RULES.

[See T.R. 5 (1) (f).]

[G.S.T.R. 5, 6, 7, 8, 12.]

AGENTS WHO CANNOT BE LICENSED.

The section applies only to Agents of principals residing within the Province. agents of principals residing outside the Province are themselves dealers and cannot be licensed. (See Section 14-A, note in G.S.T.R. 5, and condition 4 of Form V). Similarly agents of unknown and fictitious principals are dealers (See Section 230, Contract Act). They cannot be licensed and even if licensed they are not exempt from liability to tax. Again agents of non-resident principals dealing in goods falling under Section 4, cannot be licensed, the entire Act being inapplicable to goods under Section 4.

SCOPE OF THE SECTION AND DIFFICULTIES IN THE APPLICATION OF THE PROVISION.

1. The object and purpose of the section being to exempt transactions otherwise taxable, the section cannot obviously cover transactions of principals which are not taxable, and such transactions *need not be covered by licence*. Similarly as considered already agents selling or buying goods *excepted* from the Act (Section 4) cannot be licensed.

(i) Where the principal has a turnover of less than Rs. 10,000, the agent acting for him need not take out a licence. The same result must follow if an agent acts for several principals each of whom (principals) has a non-taxable turnover. The reason is this: The transactions are those of the principals and property in goods passes from *them* (principals), whether or not the agent is licensed.

(ii) In the case of goods taxed in the seller's scheme, the seller pays tax and the *purchaser is not taxable*, and in the case of goods taxed in the buyer's scheme, the buyer is taxed and *not the seller*.

In the above cases is the agent of the buyer in the former case, and the agent of the seller in the latter case taxable, particularly when the principal is not taxable? Legally and logically the answer is in the negative since the real transaction is that of the principal which is not taxable.

(iii) Where the transactions are in respect of goods under Section 5 is the agent to be taxed on the ground of absence of licence? The answer is in the negative since the transactions are really those of the seller (principal).

(iv) If in the case mentioned in (iii) above the principal and the agent are both unlicensed are both to be taxed in respect of the same transaction? The answer is in the negative. By reason of Section 6-A the principal may be taxable. But the agent is not taxable, the transaction being really that of the principal.

(v) Where the principal is the grower of produce or has interest in land in which the produce is grown, the turnover of sale is not includable in the determination of turnover. [Section 2 (i) Proviso.] But if the sale is effected through an unlicensed agent is the agent taxable? The answer is in the negative. The transaction of sale is, by the grower, the intervention of the unlicensed agent notwithstanding. So the sale is nevertheless not taxable.

2. Again the question arises whether in view of non-observance of or contravention of licence, the licensed agent can be treated as a dealer.

For instance, (i) where the commission or brokerage is not agreed, or (ii) where the entire turnover of the agency transaction is not included in the taxable or taxed turnover of the principal (seller or buyer according to the schemes of taxation), is the agent to be deemed to be a dealer? Viewing the matter in legalistic light, an *agency* transaction does not by the mere contravention of the terms of licence get converted into a *taxable dealer* transaction. So in these two cases the Department can only call upon the principal dealer to pay tax on the turnover that has escaped assessment.

In all the above illustrative cases [1 (i) to (v) and 2 (i) and (ii)] in the *absence of licence* or *on non-fulfilment* of the terms of licence the agents were taxed by the department. Every transaction was deemed by the department to be a *dealer transaction* in the absence of licence or non-observance of the terms of licence. The fallacy in the view is the assumption that from unavailability of exemption, taxability does necessarily follow even in abrogation of the general law under which the dealer is the principal (seller or buyer) from whom or to whom property in goods sold or purchased passes, the intervention of the agent notwithstanding. Further, the non-observance of or breach of the terms of licence under Section 8 or even the absence of such licence, does not enlarge the scope of section 2 (b) of this Act and convert the agent into a dealer.

Faced with this anomaly, the department imported the fiction that the agent of the buyer (in goods taxable in seller's scheme) is a dealer seller and the agent of the seller (in goods taxable in buyer's scheme), is a dealer buyer who gets title, and transmits title. In other words a transaction is to be split into two transactions, one from the dealer to the agent and the other from the agent to transferee, so that whatever protection may be afforded to the principal's transaction, the agent is independently taxable. This too is illegal. It is well settled that "the relation of a dealer and a broker is that of a principal and an agent and not of a seller and a buyer" ².

Under the general law, sale is a single and indivisible transaction notwithstanding the intervention of the agent, and delivery of goods to an agent by his selling principal and *from* an agent to his buying

principal is not sale. Thus the fiction imported by the department, apart from being unreal and inequitable is also unjustified in law and involves taxation of persons (agents) who are not dealers and transactions (delivery to or from principal) which are not sales. Further, if the agent is treated as a dealer, it may be noted that he has no title to convey (Sections 27, Sale of Goods Act). In law such an agent can convey the title of the *principal* only if he is a mercantile agent in possession of the goods with the consent of the owner.² The procedure followed by the department would thus amount also to double taxation of both the principal (seller or buyer) and agent in respect of an indivisible transaction of sale which is patently illegal.

In a recent case Chandrasekhara Iyer, J., pointed out that, that whether licensed or unlicensed, it is open to an agent (of a resident principal) falling under Section 8 to show that he was only acting as an agent and is not liable to be taxed as a dealer.³ It may be that if unlicensed, the agent runs some risk, but it is too wide of the mark to contend that in the absence of a licence he becomes a dealer. It may be pointed out also that neither Section 14A nor Section 6A (*New*) permits taxation of an unlicensed agent of a resident principal. The departmental view is thus unjustifiable, inequitable and illegal.

May grant licence.—See Introduction. Interpretation "*May*". Licensing Authority cannot decline to grant licence where agents fulfil requirements of the section.

Buys or sells.—The reference is to agents or principals covering two schemes of taxation under the Act the buyer's scheme and the seller's *scheme* (Turnover Rule 4). In the case of goods within the buyer's *scheme* [groundnut, etc., T.R. 4 (2)] the agent of the buyer has to be licensed to be exempt from tax and since the seller is not taxed, it is immaterial whether the agent of the seller is licensed. Similarly in the case of goods within the *seller's* scheme [all other classes of goods T.R. 4 (1)] the agent of the seller has to take out a licence and it is immaterial whether the agent of the buyer is licensed. A person may be the selling agent in respect of some goods and the buying agent in respect of other goods. (See Forms X & XI)

Agent holding out as dealer

An agent having no ownership of goods may hold himself out as a dealer though the property in goods may not really vest in

3. 1947(2) M.L. J. 220 (Case under present Act)

Subsequent to this decision, in the Amending Bill of 1947, Section 2(b), 2(h), 2(i) were sought to be enlarged so as to take in the transactions between agents and principals as taxable sales and purchases and Sec. 8 was sought to be deleted altogether. Before the Select Committee it was contended

that commission agents are necessary links in the marketing of agricultural and industrial products, and that their (agent's) elimination would adversely affect Trade and Industry. The Government finally decided to retain Section 8, making the rules very tight so as to prevent evasion and the proposed amendment to Section 2(b) was dropped.

him, he may purport to have possession the price and transfer possession for consideration, and the purchaser may pay the price to the agent on the basis that the actual seller (agent) is the owner himself. In such a case the agent is a dealer and is liable to be taxed.^{3A}

GENUINE AND FICTITIOUS AGENCY TRANSACTIONS

Known principals specified in the accounts.—The principal must be known and specified in the accounts. The word 'principal' means a person for whom an agent does an act or a person whom an agent represents. The term 'known principal' has a significance somewhat similar to the words "disclosed principal" as used in the Contract Act (Sec. 230, Contract Act). Where the principal is not known or where the principal is not disclosed, the agent is personally liable under the General Law for contracts entered into by him. The licence is inapplicable to an agent of an unknown or unspecified principal (See condition 4 in Form V)

Absence of large capital commensurate with the extent of business may be a test to find out the genuine nature of an agency transaction. But this test is not conclusive. An agent with a capital of a few hundreds may transact business to the tune of several lakhs while a dealer would have some thousands of rupees at least as capital.

A second indication is the very low margin of benefit. For instance business profit ranges from 6- $\frac{1}{4}$ % to 15 or 20% while commission works out at $\frac{1}{4}$ or $\frac{1}{2}$ % generally.

In the case of many agents, they do not even have the custody of goods. They do not keep godowns nor even incur expenditure for transporting goods from the seller to the buyer.

Other indications are the conduct of the agent and the buyer. If the agent purports to have possession and fixes the price for goods, and if the purchaser pays consideration on the basis that the actual seller (agent) is himself the owner, the former is a dealer.^{3A}

Sometimes a selling agent may advance money to the seller principal and receive goods, and after sale credit the amount received, and take the commission due. Sometimes a buying agent may incur expenditure for buying goods, get himself repaid and take the commission due. A commission agent may make advances (See also Section 214, Contract Act). The question in each case, whether the sum paid by the agent is an advance or not, is a question of fact to be determined with reference to the circumstances of each case.

Suppose A, a selling agent sells to B goods on behalf of C or suppose A buys on behalf of C goods from B, normally it is a single sale property in goods passing from the seller to the buyer. There are no two sales one from the seller to the agent and the other from the

agent to the buyer. The charging of sales tax only once in the transaction is an indication that the sale or purchase is one single transaction.

Agreed commission or brokerage.—The terms brokerage and commission are synonymous. The commission or brokerage must be agreed to between the parties (principal and agent) and not be left undetermined. The agent must have no title or interest in the goods just as an owner has. The exemption is not claimable for transactions otherwise than for agreed commission or brokerage (condition 4 in Form V).

Commission being the entire remuneration.—(*New*)—Under the amended section operative from 1st January, 1948 commission also must be specified in the accounts separately to permit of checking. (See condition 5 of Form V.) Besides commission no other remuneration must be receivable by the agent. The object is that the agent (selling or purchasing) must report to the principal the full price obtained by sale or purchase of goods ⁴.

Paddy commission licensees (*Old*).—The Board of Revenue ruled that commission agents selling paddy on behalf of principals and getting commission both from the sellers and the purchasers are agents who could be licensed under Section 8 and the agents were required to prepare supplemental accounts showing turnover inclusive of the commission received by them from both buyers and sellers, such total amount being considered as the actual sale price which the buyer is made to pay. The principals (owners of paddy) were held taxable [if not entitled to exemption under the proviso to Section 2 (i)] on the increased turnover, and in cases where the principals were unwilling to be taxed, the agents were held taxable.

Legitimate incidental charge—Interest—(*New*).—An agent is not to be denied the benefit of exemption merely because he (agent) receives, besides commission, incidental expenses from the principal which business expenses and charges have been actually incurred by him (the agent). If an agent has borrowed moneys for the principal's business and has paid interest thereon he is entitled to reimburse himself. (See condition 5 of Form V).

4. A special officer was appointed to report on the working of Section 8. The report showed that in most cases "the selling agent made some extra collections from the buyers, besides the commission obtained from the selling principal," which were not reported to the principal. The effect was that these collections escaped taxation though the extra collections also formed part of the actual sale price, the price paid by the buyer. In some instances the selling agent did not

give the principals full credit for the quantities sold. For instance, he charged the buyer for $\frac{1}{2}$ seer per maund more than the weight of the goods sold and paid the principal for the weight of the goods sold less $\frac{1}{2}$ seer per maund and thereby earned a profit which he credited to the account of some fictitious person. To prevent such evasions, the section has been amended (Government Communique on Report of Special Officer).

Turnover, inclusion.—The commission *paid* to the agent is includable in the turnover of the principal who must pay tax on the entire turnover *inclusive of commission*. But interest on principal sum advanced and legitimate incidental business charges are not includable in the principal's turnover for tax. The commission payable to the agent *may be apart* from the business charges aforesaid.

Specified in accounts (New).—To permit of check up the incidental business expenses or charges must also be *specified* in the accounts of the agent (See condition 5 of Form V).

Incidental charges—list illustrative (New).—The list of incidental business expenses is *illustrative* and not exhaustive as the words “and the like” show.

Exempt from tax or taxes.—Exemption is only from tax or taxes under Section 3 and there is no power under the section to exempt an agent from payment of licence fee.

Taxes.—The reference to ‘taxes’ is necessitated by provision for higher rates of tax for luxury articles. [Section 3 (2).]

Transactions carried in accordance with..... licence.—Exemption from tax is available only if transactions are carried out in accordance with licence. (See Form V.)

Sale of produce grown by him or on his land.—The exemption of the sale of produce by primary producer in this section is necessitated by the exemption granted in the proviso to section 2 (i). [See commentaries to Section 2 (i).]

Sale of Produce of principal (other than primary producer).—Such sale must be included in the principal's turnover, if the agent desires to claim exemption.

Would have been included but for exemption.—The words must be construed liberally. These words provide for sales by agents being exempt from taxation, if goods are otherwise exempt from taxation, [Condition 3 of Form V. See Sections 4 and 5] or if the principal is otherwise exempt. See Section 3 (3) and provisos to Section 3 (5).⁵

Collection of Sales Tax by Agents

Agents are not entitled to collect sales tax from customers. Only dealers, and even dealers only if licensed (New) can collect tax from customers. If they (Agents) collect, apart from being considered as dealers, the amount collected must be remitted to Government. (Section 8-B).

5. To facilitate quick working of this provision, the present writer suggested that a certificate may be insisted signed by both the principal and the agent to the effect that turnover is either in-

cluded in the principal's turnover or that the turnover is otherwise exempt from such inclusion. False statement in such certificate may be made punishable by suitable provision in Sec. 15.

Onus of proof (New).—Onus of proof of availability of exemption in respect of a transaction is on the licensee (See condition 6 of Form V).

AGENT AND PRINCIPAL

General Law

Agent's Duty to Principal.—For meaning of term 'Agent', see commentaries to Section 2 (b). An agent must conduct business according to the principal's directions or custom prevailing⁶ using reasonable diligence⁷. He (agent) must communicate with the principal in case of difficulty⁸ and render proper accounts⁹ retaining, however, out of moneys received on principal's account, the sum advanced by himself (agent) as also expenses and remuneration¹⁰ and pay the balance to the principal¹¹. An agent is entitled to lien on principal's property for commission due¹². An agent's transactions on his own account are repudiable by the principal¹³ who can nevertheless claim the benefit gained by the agent in the transaction¹⁴.

Principal's duty to Agent.—See Sections 222—225, Contract Act.

Agent in relation to third parties.—See Sections 226—238, Contract Act.

UNDER PRESENT LAW

Rendition of accounts to principal (buying principal or selling principal) and production of the original accounts or a copy thereof to the Department, proof before the department of the incurring of incidental business charges, and of the obtaining of and production of bills for purchases or sales, production of authorisation for purchases showing also the date thereof before the Department, producing evidence before the Department in the shape of accounts mentioning dates of sales, purchases, etc., and the persons, etc., to whom or from whom the transactions were effected are some of the conditions insisted on for claiming exemption (see Form V—conditions 7, 8, & 9). On conditions of licence being contravened exemption is unavailable.

Separate Accounts.¹⁵ A licensee under Section 8 dealing in goods under Section 4 or 5 or dealing otherwise than for agreed commission

6. 211, Contract Act.

7. 212 "

8. 214 "

9. 213 "

10. 217 "

11. 218 "

12. 221 "

13. 215 "

14. 216 "

15. The report of the Special Officer

appointed to report on the working of Section 8 showed that dealers who brought and sold in their own accounts and on behalf of principals did not maintain separate accounts (Government communicate). In the absence of separate accounts checking becomes difficult and such dealers stand risk of being taxed on entire turnover. See 148 (2) M.L.J. 93.

or brokerage must keep separate accounts¹⁰. [G.S.T.R. 12 (1) and (3).] Besides ordinary accounts, new rule G.S.T.R. 12 (4) provides for maintenance of accounts in a specified form (Form X buying agent, Form XI selling agent). See also G.S.T.R. 33. The conditions of licence, in Form V and Forms of Account, Form X and XI, show that there has been a tightening of restrictions to prevent evasion. Dates of receipt and disposal of goods and other details have to be shown.

Absence of separate Accounts.—Benefit of Section 8 is unavailable. But is the agent taxable? See T. R. 5 (1) (f) and G.S.T.R. 7 and Section 6-A Commentaries. See “*Scope of Section*” above.

Absence of licence and contravening conditions of licence effect.—Exemption is unavailable. [See also Form V, condition (9).] But is he taxable? See “*Scope of Section*” above and Section 6-A comments.

Non-payment and Recovery of Licence Fee.—See G. S. T. R. 7 (11) (d). Benefit of Section 8 may be unavailable. But is the dealer taxable? See “*Scope of Section*” above and comments to Section 6A. Licence fee is recoverable by prosecution. See 15 (New).

Licensing Authorities.—See G.S.T.R. 5 and “Licensing” Introductions “Analytical Study of the Taxation law”.

Escaped fee, rectification of mistakes.—See G.S.T.R. 17 and 18.

Appeal, Revision.—See Sections 11 and 12.

REGISTRATION OF DEALERS

SECTION 8-A (NEW)

8-A (1) *Every dealer whose turnover in any year is not less than seven thousand five hundred rupees shall, and any other dealer may get himself registered under this Act, and for that purpose, shall submit an application for registration, to such person, in such manner, within such period, and accompanied by such fee not exceeding six rupees, as may be prescribed.*

(2) *A dealer who has got himself registered in pursuance of sub-section (1) is entitled to have his registration cancelled, if he is able to establish to the satisfaction of the prescribed authority that his turnover in each of two consecutive years was less than seven thousand five hundred rupees.*

(3) *A dealer shall, until his registration is cancelled, be liable to pay the fee prescribed as aforesaid, for every year subsequent to that in which he applied for registration.*

Relation of Section to Rules.

See T.R. 5-A (*New*) SUB-CLAUSES (1) TO (6)

Registration of Dealers

This is a new provision. The Sales Tax Acts in Bengal, Bombay, Bihar and Central Provinces contain similar provision. As tax is payable at the stage of sale to unregistered dealer, registration is needed to claim exemption from tax, in these provinces.

In our province and in U. P. where similar provision is introduced, taxation being under the multi-pointed system all *registered* dealers are liable to pay tax. See Appendix.

Effect of the new Section

New Section 8-A provides for the compulsory registration of dealers whose turnover in any year is not less than Rs. 7,500, with a view to prevent evasion of tax in marginal cases. To provide for cases where a dealer expects his transactions in the first year in which he sets up business to exceed Rs. 10,000, provision has been made for a dealer registering himself under new Section 8-A at his option.

APPLICABILITY OF THE SECTION

(i) A dealer with an *actual* turnover of less than Rs. 10,000 and not less than Rs. 7,500 is under an obligation to register himself. [T.R. 5-A (1).] But such a registered dealer is not subject to the taxation or licensing provision.

(ii) Similarly a dealer whose turnover is Rs. 10,000 and over must also register himself. He is subject to registration, taxing and licensing machinery provisions also. Thus in the case of assessable dealers, the provision imposes an *additional* burden in the shape of registration fee.

(iii) A dealer (a) *having* a turnover of less than Rs. 7,500, or (b) *anticipating* such turnover (of less than Rs. 7,500) in future, or (c) *anticipating* a turnover of more than Rs. 7,500 may register himself. The registration is only optional. [T.R.5-A (2).]

The term 'dealer' must be understood in its widest significance of including contractors, the agents of non-resident principals and representative and constructive dealers.

It may be contended that registration does not apply to goods which fall under Section 5, and that the benefit of registration in permitting collection of tax by registered dealer from his vendees or customers is inapplicable to goods exempted from tax in view of licence, as, for example, in the case of a dealer in handspun yarn, or handloom cloth woven with handspun yarn. But there are strong reasons for the view that the section is comprehensive. Firstly the term "dealer" includes a "licensee" as well. Secondly, the object of the section is

to bring within the jurisdiction of authorities under the Act marginal dealers so that they may check their accounts and apply the taxing or licensing machinery if facts warrant (see Section 8-B). So, irrespective of whether a person is dealing in goods exempted from tax or goods taxable under the Act or not the provision must be held to apply. Therefore a person dealing in taxable goods or goods like cotton, or handspun yarn, or non-handspun yarn or handloom cloth (woven with handspun yarn or partly or wholly with mill yarn) or Bullion and specie, or Hides and Skins, or newspapers, etc., must get himself registered if his turnover is Rs. 7,500 and over.

Application of taxation and penal provisions to registered dealers
See Section 8-B and Section 15 (e), (f) and (g).

Dealer in goods under Section 4.—Goods falling under Section 4 are totally outside the purview of this Act. This Act being inapplicable, a dealer dealing in those goods is outside the purview of this section as well.

Primary producer dealer.—[Section 2 (i) proviso]—Primary producer of agricultural or horticultural produce, or one in whose land, such produce is produced must, if he is a *dealer* (carrying business), and if the turnover is Rs. 7,500 and over must register himself. See Commentaries to Sec 2 (b) “business”. He is within this Act if he is a dealer.

Suppose a person, as a business takes leases of estates and sells the produce. He is a dealer and must register himself if his turnover exceeds Rs. 7,500. But every landholder cannot be considered to be a dealer.

Optional Registration.—In all the above cases, dealers of goods (under Section 3 or 5) with a turnover of less than Rs. 7,500 may also register themselves.

Authority to whom application is to be made.—The authority is the Assistant Commercial Tax officer of the area in which the dealer's principal place of business is situate. [T.R. 5-A (1) and Notification II.]

When Application to be made—

(i) Application must be made before the expiry of the month succeeding that in which the turnover reached Rs. 7,500. Thus if in August 1948, the turnover reaches Rs. 7,500, application must be made before the 30th September 1948. [T.R. 5-A (1).]

(ii) For the year 1947-48, if before January 1948 the turnover reached Rs. 7,500, application must be made on or before the *1st February 1948*. [proviso to T.R. 5-A (1).] It is to be noted that registration is not postponed. Only the prohibition of collection of tax by unregistered dealers is postponed (8-B proviso)

Forms of Registration. See T.R. 5-A (3)

Compulsory Registrations Form A-6.

Optional Registrations Form A-7.

Fee payable.—The annual fee is Rs. 6 payable in cheque or M.O. or even a treasury receipt may be produced. [T.R. A (4).]

Granting of Registration Certificate.—If only the fee is paid, the assessing officer is under an obligation to grant Registration Certificate. He cannot reject the application. [T.R. 5-A (5).] (See Form A-8 Certificate of Registration.)

Continuance of Payment of fee and Cancellation of Registration.—[Section 8-A (2), 8-A (3) and T.R. 5-A (6).]—Under Clause 8-A (3) for the year subsequent to the year of application for Registration the fee has to be paid. [(See also T.R. 5-A (6).] Similarly till *cancellation* the fee has to be paid. [Section 8-A (3) and T.R. 5-A (6).] Cancellation is permissible [Section 8-A (2)] only if the dealer establishes to the satisfaction of the prescribed authority that his turnover for *two consecutive* years was less than Rs. 7,500. It must be noted that the onus of proof of non-registrable turnover is on the dealer. Thus if for 1948-49 registration is applied for by a dealer on reaching the limit of Rs. 7,500, for 1949-50 (the subsequent year) he must pay the Registration fee on or before the 1st May 1949. If in 1949-50 and in 1950-51, his turnover is less than Rs. 7,500, and he proves it to the satisfaction of the authority, his registration will be cancelled. But till 1950-51, the dealer must continue to pay the registration fee of Rs. 6 on or before the 1st May of 1950 and on or before 1st May 1951.

Consecutive year.—If after registration in a *particular year* only the turnover of a dealer falls below Rs. 7,500, he is not entitled to get the registration cancelled. Legislature guards against the cancellation on a mere *casual* fall in business.

Effect of non-registration.—The results are these :—

(i) Disability is imposed on the dealer prohibiting him from collecting sales tax from his customers (Sec. 8B).

(ii) Dealer with registrable turnover is liable to be prosecuted Sec. 15 (e)].

(iii) Liability is nevertheless imposed on the dealer to pay whatever taxes he collects to Government (Sec. 8B.)

(iv) Till cancellation registration fee can be recovered if once registration is applied for.

Effect of Registration.—A registered dealer dealing in taxable goods is entitled to collect sales tax from customers (Section 8-B).

Maintenance of Accounts.—See Section 13.

Refund of Registration Fee.—Registration fee is not refundable if actual turnover is found to be less than Rs. 7,500.

SECTION 8-B.

COLLECTION OF TAX BY DEALERS.

[NEW]

8-B. (1) *No person who is not a registered dealer shall collect any amount by way of tax under this Act ; nor shall a registered dealer make any such collection except in accordance with such conditions and restrictions, if any, as may be prescribed :*

Provided that the Provincial Government may exempt persons who are not registered dealers from the provisions of this sub-section until such date, not being later than the 1st day of April 1948, as the Provincial Government may direct.

(2) *Every person who has collected or collects any amount by way of tax under this Act, on or after the 1st day of April 1947, shall pay over to the Provincial Government within such time and in such manner as may be prescribed, all amounts so collected by him if they are in excess of the tax, if any, paid by him for the period during which the collections were made ; and, in default of such payment, the amounts may be recovered as if they were arrears of land revenue.*

Effect of the Amending Act of 1947

Dealers were permitted by the Department to collect sales tax on their transactions. But this practice led to the unauthorized collection of the tax in many cases. To prevent this, new Section 8-B prohibits persons who are not registered dealers from collecting sales tax from their customers, and also provides that persons who collect the sales tax should pay over to the Government all amounts collected by them which are in excess of the tax levied on them.

As it will take some time for the registration of dealers, power has been given to Government to permit even unregistered dealers to collect the sales tax until such date (not being later than the 1st April 1948) as may be fixed by them.¹

Relation of Section and Relevant Rules

See T.R. 5-A (new) SUB-CLAUSES 7 TO 9

Applicability of Section in relation to taxation and penal provisions

Clause (1) applies to dealers compulsorily registrable but not registered, and also registered dealers contravening conditions and restrictions of licence.

1. Notes on clauses to the Bill published by the Government.

In regard to dealers, the clause affects the following categories of dealers :

(A) Dealers with turnover of Rs. 10,000 and over (taxable and compulsorily registrable dealers) if such dealers

(i) when unregistered collect tax or taxes from customers

or

(ii) when registered, collect tax or taxes in contravention of the conditions or restrictions imposed (*e.g.*, collect more than the tax, etc.)

(B) Dealers with turnover Rs. 7,500 and over but less than 10,000 (Compulsorily registrable but not taxable dealers) if such dealers

(i) when unregistered collect tax or taxes from customers

or

(ii) when registered, collect tax or taxes in contravention of the conditions or restrictions imposed (*e.g.*, collect more than the tax, etc.).

(C) Dealers with turnover of less than Rs. 7,500 (not taxable and only optionally registrable dealers) if such dealers

(i) when unregistered, collect tax or taxes

or

(ii) when registered collect tax or taxes in contravention of the conditions and restrictions imposed (*e.g.*, collect more than the tax).

Clause 2 of the Section is much wider and applies to all *dealers* whether they are registered or unregistered, whether the turnover of the dealer is Rs. 10,000 or less or more and whether the dealer is assessable or not to tax. This is clear from the use of the word "Every person." The principle of the second clause is that the State should get at the entire collections of tax made by dealers from customers.

In the above note dealers specified in (A) are normally : (i) taxable, (ii) registrable, and (iii) are liable to pay the sums collected from customers, if any in excess of the tax paid. On failure they can be prosecuted under Sec. 15 (b) and (d) (failure relating to tax), 15 (e) and (f) (failure to apply for registration, collecting tax without registration or in contravention of it) and 15 (g), (failure to pay the excess sum to Government).

Dealers specified in (B) are normally (i) registrable, and (ii) are under obligation to pay the sums collected from customers, if any sum is collected. On failure they can be prosecuted under Section 15 (e) (failure to apply for registration). If they (dealers in division B) choose to collect tax without registering themselves, or after registration collect in contravention of the conditions of registration, or fail to pay the sum collected to Government, they can be prosecuted under Section 15 (f) and (g). But Section 15 (f) and (g) are inapplicable if they do not collect tax.

Dealers in division C are normally neither taxable nor registrable. If, however, they choose to register themselves, and if they choose also to collect tax they come within the section. If they on registration choose to collect tax or without registration collect tax, they are liable under Section 15 (f). If they (dealers in division C) fail to pay the sum collected, they are liable [Section 15 (g)]. Section 15 (f) and (g) are inapplicable if dealers in division C do not collect tax.

Conditions for collection of tax by Registered dealers [T.R. 5-A (7).]

—The general provision that whatever taxes are collected by any dealer (registered or unregistered, assessable or unassessable) must be paid to Government is laid down in Section 8-B (2). Clause 1 of Section 8-B and T.R. 5-A cover cases of *registered* dealers. Such registered dealers (compulsorily registrable or optionally registrable) *may* collect tax. No obligation is imposed on them to collect tax or taxes from their customers. But the two conditions imposed on them which are of a mandatory character are these. Firstly, the collection if any made from customers or purchasers ought *not to exceed* the rate or rates specified or prescribed. (Sections 3, 5 or notified under Section 6.) Secondly, on or before the 30th April the total amount collected for the preceding year must be paid to Government. [T.R. 5-A (7) and Section 8-B (2).] To the extent, dealers with turnover of less than Rs. 10,000 are affected, this provision is an exception to the rule that a dealer below a turnover of Rs. 10,000 is not liable to pay tax.

Collection of Tax by Yarn Dealers.—Yarn dealers who have to pay tax to Government can collect the tax from those to whom they sell yarn. The tax paid by them will ultimately be passed on to consumers (Textile Commissioner's Note, dated 12th January 1948.)

Collection of tax by licensed Kerosene dealers and Ration dealers. Government has fixed the price at which retail dealer licensees of kerosene have to sell kerosene to consumers and this price is inclusive of sales tax. Similarly, the price at which food-grains have to be sold to consumers by food-grain licensees in ration shops is fixed by Government and the price includes sales tax. So while these dealers have to pay sales tax, they are not entitled to add sales tax to the price fixed by Government.

Collection of sales tax by Agents.—See Section 8.

Collection of tax on fractions of a rupee. It was represented to Government that it was inconvenient and extremely difficult for registered dealers to collect sales tax on fractions of a rupee. Government have now issued orders that for the purpose of collection of sales tax under the Madras General Sales Tax Act registered dealers shall ignore fractions of a rupee below eight annas and treat fractions of a rupee of eight annas and above as one rupee. (*Press communique* dated 16th April).

Voluntary payment.—T. R. 5-A (7) contemplates *voluntary* payment by the registered dealer of taxes collected by him.

Proviso.—The effect of the proviso is to postpone the operation of clause (i) and permit in the intervening period collection of tax by unregistered dealers. It must be noted that registration is not postponed, but only the prohibition against collection of tax by unregistered dealers, if the Provincial Government so notifies.

Payment of tax or taxes collected by dealers and excess amount [Clause (2)].—This clause as already seen is more comprehensive than the first clause. *All dealers*, whether with or without taxable turnover, whether registered or unregistered, are liable to pay the tax collections made by them from their customers to Government.

Even *non-assessable* dealers [Dealers entitled to the benefit of non-taxable minimum Section 3 (3)] must pay the taxes collected from their customers, though as dealers they are not assessed to tax.

Assessable dealers (dealers with turnover of Rs. 10,000 and over) must pay *tax or taxes* to Government under this Act, whether or not they pass on the tax to their customers. If in the process of reimbursing, the dealers collect more the excess collected must also be paid to Government. For instance, if a dealer sells 8 pencils at As. 12 each, he can collect from each purchaser sales tax of 3 pies. He thus collects 2 annas as sales tax while he pays to Government only $1\frac{1}{2}$ annas. The present section casts an obligation on the dealer to pay to Government the excess of half-anna collected as tax from purchasers.

Submission of Returns.—Dealers with a turnover of Rs. 10,000 and over have to submit returns, and the amended rules provide for the final returns showing also the total amounts collected by way of tax or taxes from customers, for the preceding year or preceding month (T.R. 11 and 13). This provision of submission of return is inapplicable to non-assessable registered dealers (with turnover of less than Rs. 10,000).

Production of Accounts.—Taxable dealers (with turnover of Rs. 10,000 and over) can be called upon to produce accounts. [T.R. 7, 11 (2), 13 (3).] Similarly registered dealers (including non-taxable dealers) can be called upon to produce accounts. [T.R. 5-A (8).]

Time limit for checking accounts of registered dealer.—The proviso to T.R. 5-A (8) prescribes the time limit within which the accounts of registered dealers have to be examined by the authorities, for checking whether the taxes collected have been paid to Government. Thus if in 1947-48, or 1948-49 collections have been made, the power of checking must be exercised before the 31st March 1949 and 1950 respectively.

Withholding amount.—Assessing authority to be satisfied.—Whether in the case of non-assessable registered dealers or assessed registered dealers, if the authority is satisfied that the tax or taxes collected or any portion of them are withheld, notice will issue in Form B-2 calling for payment of the excess withheld within 21 days [See T.R. 5-A (9)].

It stands to reason that the assessing authority must pass an order setting out the reasons for holding that tax or taxes have withheld in whole or in part.

Collection of tax as arrear of land revenue.—*See* Section 10 Commentaries. Other modes of recovery are also available like prosecution [Sec. 15 (g)] and suit by Government.

Other powers of authorities checking accounts of registered dealers. If, on checking accounts, the authority is satisfied that the dealer has a turnover exceeding the non-taxable minimum (Rs. 10,000 and over), the former can after following the procedure in Turnover Rules assess the dealer to tax.

Similarly, if the dealer deals in goods falling under Section 5, or notified under Section 6, the authority may, if he holds that the turnover is Rs. 10,000 and over, apply the licensing provision, and direct the unassessed registered dealer to take out a licence or grant penalty licence, or even assess as he would assess an unlicensed dealer with taxable turnover.

Section 9

PROCEDURE IN ASSESSMENT

[BEFORE AMENDMENT]

9. (1) Every dealer whose turnover is ten thousand rupees or more in a year shall submit such return or returns of his turnover, in such manner, and within such periods as may be specified in the rules made under sub-section (2) of Section 3:

(2) (a) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.

(b) If no return is submitted by the dealer under sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall proceed to determine the turnover in accordance with the rules made under sub-section (2) of Section 3 :

Provided that before taking action under this clause, the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

Section 9.
PROCEDURE IN ASSESSMENT

[AS AMENDED]

9. (1) Every dealer whose turnover is ten thousand rupees or more in a year shall submit such return or returns relating to his turnover, in such manner, and within such periods as may be *prescribed*.

(2) (a) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.

(b) If no return is submitted by the dealer under sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall *assess him to the best of his judgment*.

Provided that before taking action under this clause, the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

Effect of Amending Act of 1947

The changes are consequential on amendment to Section 3 which now provides for taxation of different articles at different rates.¹

Summary of Section and Relevant Rules.²

(See SECTION 3 AND "ASSESSMENT")

(See TURNOVER RULES 6, 7, 8, 9, 11, 13, 15)

See Assessment under the heading "*Analytical Study of the Taxation Law*". Introduction.

Submission of Return.—Only dealers whose turnover either actual or anticipated is Rs. 10,000 and more should submit a return. Dealers whose turnover is below this sum are exempt from tax and they are therefore not obliged to submit returns. Even the Amended Act coming into force on 1-1-1948 does not cast an obligation on registered dealers with turnovers exceeding Rs. 7,500 but below Rs. 10,000 to submit returns. Dealers should voluntarily submit returns. No notice to dealers for the purpose is obligatory on the part of the Government³.

Return for a year.—The wording of the section shows that return should be submitted only if the annual turnover is Rs. 10,000 or more. If, in a year, the turnover is less than the sum, though the dealer might have had a turnover for a larger sum in the previous years, he need not submit a return for that year. If the total turnover of a person acting as a dealer and also as a broker is more than Rs. 10,000 he must submit return in Form A, unless he is able to prove that his turnover as dealer, excluding agency transactions is less than Rs. 10,000.^{3a}

Compulsory submission of return.—Failure to submit return if it is wilful, is punishable⁴. The Act thus compels the submission of returns by dealers voluntarily. The return to be submitted must be true. Wilful submission of an untrue return is punishable.⁴

Proper return, no proper return, complete return, incomplete return, correct return, incorrect return, no return.—In considering what a valid return is for purposes of this Act, some of the decisions under the Income-tax Act may be useful. A return must comply with the rules framed under this Act, for the rules have the force of law⁵. It must be in the form prescribed^{5a}. Such a return is a proper return under the Act.

A return which totally ignores the statutory rules relating to the form of return cannot be considered to be any return under this Act⁶ and can be treated as nullity⁶. A return which is unsigned and is

1. Notes on clauses to the Bill published by the Government.

2. The section can be compared to Sec. 21 to 23, Income-Tax Act.

3. Cp. 22, (1) Income-Tax Act, providing notice through the press.

3A. See 1948 (2) M.L.J. 93.

4. Sec. 15(a).

5. Sec. 19(h).

5A. See G.S.T.R. 33.

6. A.I.R. 1928 Rang. 108 (SB).

not in the "prescribed form and verified" is not a proper return.⁷ It is no return at all, an improper return being, in law, no return. A proper return may be incomplete or incorrect. But a return which is neither signed or verified, and thus ignores the statutory rules cannot be held to be merely incomplete or incorrect. Incompleteness contemplated in the section is not incompleteness arising from non-verification⁷.

A return in the prescribed form mentioning the sums approximately and without disclosing even the period to which the sums mentioned in the return related, was held to be not a return⁸. A letter in which a person only intimated non-liability was held to be no return⁹. A mere statement in the margin of a form that there has been loss, without filling the form, is no return at all¹⁰.

Similarly, mere signature in the prescribed form without making any entries in the columns therein but with the addition of the word "blank" in the column entitled "total" was held to be no return under the Act¹¹.

A statement by a partner that he knows nothing of the business and that the accounts are not available¹², or that he is too ill to take the responsibility of making a return¹³, can be treated as a case of no return.

Similarly a statement which deliberately fails to give the turnover of all the branches but mentions the turnover of some of the branches is no return¹⁴. In the undermentioned case an assessee with a view to correct a prior return sent by him sent another statement of return in Hindi, but it was not in the usual printed form. There was, however, a letter requesting the officer to substitute the figure in the statement in the printed form sent with the letter. It was held that the facts constituted a substantial making up of a return¹⁵.

Similarly a return which gives the amounts approximately, but duly verified and alleging, that the accounts were destroyed by fire, was held to be a valid return¹⁶. In answer to a notice in respect of an alleged escapement of income an assessee sent a blank printed form duly signed and verified with the addition of words "no income has escaped assessment", and it was held that the return was valid¹⁷.

Return by Agent.—Agents can send returns.¹⁸ In the case of returns, signed and verified by agents, officers must satisfy themselves about the authority of such agents.¹⁹

7. A.I.R. 1934 All. 930 & 929.

8. A.I.R. 1935 Lah. 858.

9. A.I.R. 1931. Pat. 306 (FB);

A.I.R. 1929 Lah. 593.

10. See 5, I.T.C. 127.

11. A.I.R. 1928 Lah. 729.

12. A.I.R. 1933 Lah. 290.

13. See 5, I.T.C. 263.

14. A.I.R. 1933 All. 197;

A.I.R. 1925 All. 385.

15. A.I.R. 1929 All. 919.

16. A.I.R. 1945 Pesh. 18.

17. See 1942 I.T.R. 370 & 379.

18. A.I.R. 1941 Mad. 941.

19. A.I.R. 1935 Oudh 365.

Return of branches.—Return includes return by branches. [See T. R. 5 (2).]

Reopening assessment.—See Section 3. Reopening in Appeal or Revision. See Sections 11 and 12 and G.S.T.R. 13 and 14. See also Introduction “Analytical Study of the Taxation law.”

Reopening by Rectification and Escapement, G.S.T.R. 17 and 18

Principles and Procedure in Assessment

[*Note.*—The decisions referred to below are all cases decided under the Income-Tax Act. The principles are given in a narrative form.]

There are two classes of assessment: (1) voluntary assessment or self assessment or assessment on merits, and (2) default assessment or assessment to the best of judgment in consequence of assessee's default in varying degrees. The former involves acceptance by the tax department, of the business position disclosed by a diligent and honest assessee, the scrutiny of accounts and enquiry if any by the department, being useful only to confirm the position taken by the assessee. In other words for all practical purposes the assessment is chiefly on materials *furnished* by the assessee in the form of return, accounts, etc. The latter class of assessment on the other hand presupposes default on the part of the assessee in varying degrees. A feature of this assessment is *rejection* in whole or in part, of the position taken up by the assessee and the material, if any furnished by him, the gathering, by the department of material for assessment, and the exercise of judgment for the purpose of assessment.

We will now take up voluntary assessment.

(i) Voluntary or self-assessment

The preliminary to the assessment is the receipt of necessary returns. Under the amended rules, returns must disclose also the amounts collected by dealers by way of taxes from their customers (see new T.R. 11, 13) since the amounts so collected in their entirety go to Government (Section 8-B).

If the return is correct and complete to the *satisfaction* of the taxing authority, or, in other words, if there is no suppression of turnover the officer is bound to assess on the basis of the turnover.²⁰ Acceptance of the return submitted is not a matter of routine, and to satisfy himself about the correctness and completeness of the return, the officer may scrutinise the accounts of the dealer. He can also call for such accounts as are not already produced, and he may also make inquiries [T.R. 7, 11 (2), 13 (3), etc.]. He can also exercise the powers available to him under Section 14, Notification II, and G.S.T.R. 24 to 27, *viz.*, to summon and examine the dealer and witnesses, to summon and inspect documents, to enter godowns, shops, etc., for inspection

20. A.I.R. 1938 Nag. 485.

See also 6. I.T.C. 339.

and to require dealers to furnish him any information required. (See below "gathering materials")

Though T.R. 14 does not strictly apply, it is desirable that even when assessment is made accepting the return submitted by an assessee, an order be passed disclosing the material on which the assessing authority relies. A copy of the order may also be delivered to the assessee.

We pass on to the second division, Best Judgment Assessment.

II. Assessment to Best of Judgment

Such assessment arises in two cases—

- (i) where no return or where no proper return is submitted; and
- (ii) where the return submitted is incorrect or incomplete.

In the latter case it arises only (a) if a reasonable opportunity is afforded to the dealer to produce his accounts to prove the correctness and completeness of the return, and (b) if in spite of such opportunity, the return is not proved to be correct and complete to the satisfaction of the assessing authority. If, in the latter case, the assessee (dealer) satisfies the authority about the correctness and completeness of the return, the assessment is on the basis of the return and as already stated a summary order of assessment may be passed that the return is accepted after scrutiny of accounts and recording also the reasons, if any, and additional materials, if any, on which the assessment is founded.

Let us now consider the case of Best Judgment assessment in the first of the two classes stated above.

No return assessment (Best Judgment) procedure.

When is return, no return.—(See above "proper return", etc.)—Not only when return is not submitted at all, but even in cases when no proper return is submitted, the case must be treated as one of "no return" and assessment must be to the best of judgment, the officer using all his powers to determine the turnover as best as he can after gathering materials therefor. See below under "gathering materials".

The question of submission of return and default can arise only in the case of dealers with taxable turnover (See Section 9 and Turnover Rules). So petty dealers with very low turnover cannot be proceeded against as on "no return" basis and be assessed to the best of judgment of the assessing authority.²¹ Complaint by defaulter to the best judgment assessment, as "random assessment", will not be viewed

21. It is unfortunate that petty dealers have been assessed by the Department, as on default since they have no accounts to disprove the esti-

mates of assessing authorities. This is irregular. Accounts in proper form cannot be available with them, A.I.R. 1926 Lah. 161.

with favour²² and he may have to put up with it²³, provided the officer has acted on some material, however insufficient. It is no doubt true that assessment to the best of judgment, based on mere *private opinion unrelated to any material*,²⁴ is not proper. But it is equally true that assessment made on initial default of *non-submission* of return is more summary²⁵ than assessment made *after submission* of an incorrect or incomplete return.

Where no return is submitted or where no proper return is submitted, the rules do not contemplate any duty on the part of the assessing authority to afford to the dealer an opportunity to place his case by production of his accounts regarding non-assessability, etc. It is of course open to the taxing authority to summon the assessee for examination or direct production of his accounts, as part of the process of gathering material for founding his assessment.

Judgment, contents (See below)

Receipt of return after due date but before assessment

On principles of natural justice though there is no statutory provision as in the Income-Tax Act²⁶, a return made after the due date, but before assessment is actually made, cannot be discarded.

Let us now consider the second of the two classes of Best Judgment assessment.

(ii) Incorrect, incomplete return, and assessment (best of judgment)

PROCEDURE

When is return incorrect or incomplete (See "proper return . . . return" above)

The procedure where incorrect or incomplete return is furnished can be dealt with under two broad heads, *viz.* (A) assessment and weighing of materials furnished by the dealer or assessee, and (B) gathering and assessment and weighing of material gathered by the assessing authority. The former, in its turn, involves (a) an implied finding that the return submitted is incorrect, or incomplete on scrutiny (b) the granting of opportunity to prove the correctness and completeness of the return by producing accounts, and (c) consideration of materials furnished by the dealer.

22. MacPherson's case 1912-16 Tax cited in A.I.R. 1929 Rang. 102 (F.B.). See also A.I.R. 1931 All. 417 at page 421.

23. A.I.R. 1929 Pat. 476 (F.B.) followed in A.I.R. 1930 Pat. 81, approved in A.I.R. 1933 P.C. 108. See also A.I.R. 1939 Mad. 371.

24. *Per Muckerji J.*, in A.I.R. 1930 All. 49 (subject's privilege to be taxed only on investigation).

See A.I.R. 1931 All. 23; 1926 Lah. 161; 1930 Rang. 35; 1932 Rang. 66; Assessment or no material merely on disbelieving accounts etc.

See under heading "gathering of materials."

25. A.I.R. 1939 Mad. 371.

26. A.I.R. 1932 Cal. 410 (S.B.) and A.I.R. 1931 Cal. 729 (S.B.) (Cases under Sec. 23 (3), Income-Tax Act, which permit such returns)

(A) Assessment of materials furnished by dealer**(a) Finding return to be incorrect or incomplete**

Scrutiny of return is necessary. No finding need be recorded that the return is incorrect or incomplete. It may be and is usually implied.

(b) Grant of opportunity to dealer

Notice.—A dealer must be granted opportunity to prove the correctness and completeness of return. For granting opportunity notice will issue in Form IX for production of accounts.

Though T. R. 9, 11 (2), 13 (3) and 15 (3) refer only to accounts, other evidence is not ruled out. In fact, bills, vouchers, invoices, etc., are also necessary. But accounts are most necessary. In the absence of accounts, other evidence can hardly satisfy a reasonable man.²⁷

Under the corresponding provision in the Income-Tax Act²⁸ it has been held that, in the absence of such opportunity being afforded to prove the correctness and completeness of the return, the assessment is illegal²⁹ since, otherwise, honest and diligent tax-payers will have no security for fair treatment.²⁹

Contents of notice.—The notice must state the grounds of objection to the return or accounts which are impugned. This is the rule. But where an assessee persistently makes false returns and cooks up accounts³⁰ there is no obligation to state the points on which the rejection is likely to be based.

Nature of evidence.—Though the rules mention only production of accounts all kinds of evidence which a dealer considers material must be permitted to be adduced on grounds of natural justice. Not only direct, but even circumstantial evidence is evidence for the purpose of the Act.³¹ A notice issued under the Income-Tax Act giving no option to lead evidence, was held to be illegal.³²

Reasonable opportunity.—The opportunity afforded must be reasonable (Section 9 proviso), which implies grant of reasonable time. What is reasonable opportunity is a question of fact. Calling on a party to produce evidence the next day was held to be unreasonable.³³

Onus of proof of return.—The onus is on the dealer to show that his return is correct and complete,³⁴ since it is a matter within his knowledge. Mere filing of a verified statement or giving evidence on oath by the dealer, does not shift the onus to the Department.³⁵

27. A.I.R. 1931 Cal. 729.

28. See Sec. 23(2), Income-Tax Act

29. A.I.R. 1937 All. 770. A.I.R. 1931 Cal. 729.

A.I.R. 1925 Cal. 890 *per* Mukerji J. Greaves J., holding rule waived by conduct of assessee who participated.

30. A.I.R. 1929 Rang. 102 (F.B.)

31. A.I.R. 1938 Lah. 209.

32. A.I.R. 1937 All. 770.

33. A.I.R. 1931 Cal. 729.

34. A.I.R. 1936 All. 236.

35. A.I.R. 1927 Nag. 283.

The assessing authority must consider the materials assessed by the Assessee.

(c) **Consideration of materials furnished**

The stages of consideration of materials furnished, and the gathering of materials by the assessing authority are not two watertight compartments, and they are dealt with separately only for purpose of clarity. At the stage of, or before, or after, the scrutiny of materials furnished by the dealer, the assessing authority may gather materials.

(i) **Non-production of accounts**

When notice is issued for production of accounts, they may or may not be produced. Non-production may be deliberate with a view to avoid scrutiny, or may be due to non-maintenance or other cause. Non-production may be total or partial.

To test the accuracy of the statements of the dealer, the assessing authority can direct the production of the account books of the previous years³⁶ (Section 14) even though the books relate to periods in respect of which there can be no assessment. The powers of the assessing authority in this respect are unlimited. Since the officer is the arbiter on the question of determination of taxable turnover, he is the best judge to consider what material is needed,³⁷ though totally irrelevant account books ought not be called for.³⁸ He can issue notice to the dealer to explain the items³⁹ and furnish information. (Section 14.) Default of assessee may be total or partial.⁴⁰ To the extent of default, the door is opened for assessment to the best of judgment of the assessing authority.⁴⁰ If, owing to the default of a dealer, the assessing authority is not able to do justice, complaint by the dealer about assessment being based on such scanty material as the authority could get, would be viewed with disfavour.⁴¹ The assessing authority must however act on materials²⁴ and not on mere private opinion.

36. A.I.R. 1930 Mad. 209 and 763. Accounts of firm's foreign branches if really necessary.

37. A.I.R. 1938 Lah. 551.

38. A.I.R. 1931 All. 417.

39. A.I.R. 1926 Lah. 161 & 201. A.I.R. 1932 Rangoon 52.

A.I.R. 1937 Lah. 919.

A.I.R. 1936 All. 286.

Non-production of accounts.

40. 34 C.W.N. 1093.

A.I.R. 1931 Lah. 87.

A.I.R. 1930 Pat. 127 deliberately producing unwanted accounts and not producing wanted accounts despite repeated opportunity. A.I.R. 1931 Cal. 729.—Accounts not produced. Whatever other evidence available irrelevant.

A.I.R. 1934 All. 929;

A.I.R. 1936 Lah. 489; and A.I.R. 1938 Lah. 551. With holding some account books.

A.I.R. 1930 Pat. 14 Accounts not produced. For other evidence time taken yet not produced.

A.I.R. 1936 Lah. 489 Partial default.

A.I.R. 1936 Lah. 750. Withholding documents and accounts and misrepresentation to Department.

A.I.R. 1932 Rang. 52. Non-explaining of items See cases under heading "Acceptance, total or partial"

41. A.I.R. 1931 All. 417.

A.I.R. 1929 Rang. 102.

A.I.R. 1930 Pat. 81.

A.I.R. 1933 P.C. 108 approving on appeal A.I.R. 1929 Pat. 476.

Non-production of accounts by petty dealers (with less than Rs. 7,500 as turnover) like shandy traders in villages, betel vendors, and itinerant village vendors of grocery articles, cannot be held to be default, entailing assessment to best of judgment²¹. In fact, Section 13 does not apply to such petty dealers.

The question of default would arise only if account books in the control or possession of the dealers are not produced. If accounts which are ordinarily expected to be in the possession of the dealer are not produced, he has to show the reason for non-production.⁴² If an assessee contends that accounts are not maintained⁴³ or that accounts are lost⁴⁴ or if some other excuse is put forward,⁴⁵ the onus of proving the truth of the statements⁴³ lies on the assessee, and if assessing authority disbelieves the explanation for non-production, the effect of non-production will follow.⁴³ to ⁴⁵.

But the assessing authority would not be right in calling for account books which would not ordinarily be in the possession and control of the dealer,⁴⁶ and in drawing an adverse inference from their non-production. If account books which would not ordinarily be in the possession of a dealer, are called for, the onus of proving that they could have been produced lies on the assessing authority.⁴⁷

If either voluntarily, or even on the direction of the assessing authority, account books, in the possession or control of a dealer, are not produced, the assessing authority can draw the presumption under Section 114 ill. (g), Evidence Act, that, if produced, the evidence would be unfavourable to the person withholding it.⁴⁸

(ii) Production of accounts

Onus of proof.—In the case of accounts produced, a dealer is entitled to ask the Department to start with the presumption that the entries in the account books were made in the normal course of business⁴⁹. The normal presumption is in favour of good faith. It may, however, be rebutted by circumstances and evidence.

Acceptance of accounts—total or partial.—Accounts produced may be accepted totally, or in part, by the assessing authority in proof of the correctness and completeness of the return, and, to the extent of such acceptance, the alleged infirmity in the return vanishes, and the return is assimilated to assessment-on-merits system. In considering whether accounts are to be accepted or rejected, regard must be had to the status of the dealer and the nature and extent of the business.

42. A.I.R. 1930 Mad 763.

43. A.I.R. 1941 Oudh 279.

A.I.R. 1931 Rang 53.

44. A.I.R. 1929 Lah. 173 loss in train disbelieved.

45. A.I.R. 1934 All. 929.

A.I.R. 1936 Lah. 750 denial of existence of accounts disbelieved,

46. A.I.R. 1930 Mad. 763 and A.I.R. 1939 Bom. 43 (Books of

another firm)

47. A.I.R. 1930 Mad. 763.

48. A.I.R. 1930 Mad. 209.

A.I.R. 1934 All. 559 at p. 562.

49. A.I.R. 1927 Nag. 336,

Thus, hawkers, village traders and petty shandy merchants, who have no knowledge of accounts, cannot be expected to keep regular accounts and mere defective maintenance of accounts by them is insufficient to support the total rejection of the accounts by the department.⁵⁰

Rejection—partial or total.—The accounts must be true and correct, reflecting business transactions, and showing the value of goods sold and bought⁵¹ in an intelligible form. Vouchers enable a detailed checking of the accounts and they are also necessary.⁵²

As in a "no return case", to the extent of rejection of accounts and other evidence, the case passes into the region of Judgment assessment or default assessment. Ordinarily, if it is possible to arrive at a correct and complete version of the business transactions by utilising and supplementing the data afforded by the accounts produced, this method is to be preferred.⁵³ Thus, if there are omissions of some transactions,⁵⁴ or if there are no accounts for only a portion of a business⁵⁵ or a branch of a business, or where certain items only are unexplained,⁵⁶ additions may be made to the best of judgment of the assessing authority to the turnover deducible from the accounts, instead of rejecting the accounts altogether. Again accounts may be accepted in part and rejected in part.⁵⁷

That the entries in the accounts have not been balanced, when they can be so balanced by some little effort on the part of the assessing authority,⁵⁸ that the method employed in keeping accounts does not appeal to the officer,⁵⁹ that the accounts are complicated,⁶⁰ that the accounts of the petty dealers are not regular from a strict business point of view,⁶⁰ that the accounts show only reduced profits,⁶¹ or that no stock register is available⁶¹ are not sufficient grounds for rejecting the accounts.

If, however, the accounts are cooked up⁶² or false⁶³ or fabricated or fictitious⁶⁴ or if they afford *no clue whatsoever* to the business transactions⁶⁵ so that it is impossible to gauge or deduce the business transactions from them⁶⁶ or if a *substantial* item has not been brought

50. A.I.R. 1926 Lah. 161.

51. Sec. 13.

52. A.I.R. 1936 Lahore 856.

53. A.I.R. 1939 Mad. 371. See also 1939 I.T.R. 515.

54. A.I.R. 1936 Lah. 836. Accounts in script not decipherable by officer. Additions made for omissions A.I.R. 1933 P.C. 198. Timber business addition for omissions.

55. A.I.R. 1931 Lah. 432 absence of accounts for investments only, addition upheld.

56. A.I.R. 1932 Rang. 52 (S.B.) Unexplained deposit treated as profit.

57. A.I.R. 1938 Nag. 485.

Bulhon merchant, silver accounts accepted. Gold accounts rejected.

58. A.I.R. 1925 Pat. 694.

59. A.I.R. 1939 Mad. 357.

See Sec. 13. No particular form is prescribed for keeping accounts except in the case of agents.

60. A.I.R. 1926 Lah. 161.

61. A.I.R. 1934 Lah. 876.

62. A.I.R. 1929 Rang. 102 (F.B.) and A.I.R. 1937 Lah. 721.

63. A.I.R. 1940 Nag. 88.

64. A.I.R. 1937 Lah. 721.

65. A.I.R. 1931 All. 23.

66. A.I.R. 1932 Lah. 178. Income not deducible.

A.I.R. 1937 Lah. 721 cooked up accounts.

to account, thus showing their total unreliability⁶⁷ or if *many transactions* are left out deliberately⁶⁸ the accounts can be rejected. If vouchers, without which accounts produced are valueless, are not available⁶⁹ or if there are serious discrepancies and omissions in accounts, and if in spite of opportunity afforded the dealer absents himself and produces no evidence⁷⁰ or presents himself but fails to produce the particular accounts or documents called for⁷¹ rejection of the accounts produced was held proper. In a case where combined with the absence of purchase account, sales were sorted out on a sheet of paper⁷² the entire accounts were held valueless. In another case under the Income-Tax Act cash books and ledgers were written up only fortnightly and the balances due and the names of constituents were not brought forward from previous year. It was held that rejection of accounts was proper⁷³. Where there was omission of some purchases, and only reduced profit was shown in the accounts while expenditure remained constant, the accounts were rejected⁷⁴. Absence of vouchers, combined with suppression of sales of some branch shop and the suspicious nature of some entries in domestic ledger were held sufficient to reject the accounts⁷⁵. Where the system of accounting followed was hybrid, and a register in which the transactions were contemporaneously entered before being brought into the ledger was not made available to the authorities, rejection of accounts was held proper⁷⁶.

Opportunity to explain before rejection of accounts

The assessing authority can call upon the assessee to explain the entries⁷⁷, and furnish information (Sections 14) and if explanation is unsatisfactory, the accounts can be rejected. On principles of natural justice, it is necessary that before accounts are rejected as untrustworthy, the dealer producing them must be given an opportunity to prove the correctness and completeness of the accounts⁷⁸.

Contents of notice.—The principle referred to in discussion under the head *incorrect, incomplete return and assessment* above applies *See*⁸⁰.

Rejection—reasons.—No burden is imposed on taxing officers to prove by positive evidence that accounts are unreliable⁷⁹. The assessing authority is not a party in the sense in which an ordinary litigant in a civil litigation is, leading evidence as to the state of

67. A.I.R. 1926 Lah. 233.

68. A.I.R. 1940 Pat. 239 (loans left out).

69. A.I.R. 1936 Lah. 856. 1939 I.T.R. 647.

70. A.I.R. 1936 All. 286.

71. A.I.R. 1936 Lah. 750.

72. A.I.R. 1935 Lah. 841.

73. 1942 I.T.R. 110.

74. A.I.R. 1938 Lah. 209.

75. 1939 I. T. R. 647.

76. A.I.R. 1933 P.C. 108

77. A.I.R. 1932 Rang. 52 identity of depositors not proved.

A.I.R. 1937 Lah. 919; A.I.R. 1926 Lah. 161 and 201; A.I.R. 1936 All. 286.

78. A.I.R. 1926 Lah. 161 & 201, and A.I.R. 1929 Rang. 102.

accounts of the assessee⁷⁹. His (assessing authority's) work is of a confidential nature⁸⁰.

Other documents.—^{80A} The considerations above adverted to apply as far as possible to the other materials furnished by the dealer. The assessing authority may call upon the dealer to produce other documents, or require him to explain or clear up matters which require explanation, and draw presumptions under Section 114, ill. (g) and (h), Evidence Act. Before rejecting the documents, on principles of natural justice, opportunity must be afforded to the dealer to prove the correctness of the documents, though the rules do not enjoin this.

The positive act of the assessing authority is the gathering of materials for founding assesment.

Gathering of materials by assessing authority And Assessment Procedure

This subject can be dealt with under three heads : (a) materials for founding assessment, (b) opportunity to assessee to rebut, (c) Judgment.

(a) Materials for founding assessment

(1) **Inquiry, repute and position of assessee.**—The rules T.R. 7, 8, 11, 13 & 15 refer to *Inquiry*. The difference in phraseology used "such scrutiny of accounts and such inquiry as *may* be necessary" with reference to return which is correct and complete and "*shall* call upon production of accounts.....and make such inquiry as he *considers* necessary." (T.R. 8 & 9) with reference to incorrect or incomplete return, may be noted.

The assessing authority is entitled to make inquiries⁸¹. It is not correct to state that assessment must be founded only on positive evidence known to law under the Evidence Act⁸¹. It is true that assessment must be based on some materials but no hard and fast rule can be laid down as to the nature of the materials required in assessing to the best of judgment⁸². The officer can act on private and confidential information⁸¹. The assessing authority is not debarred from going behind even the contents of a registered document⁸³. It is not incumbent that the local inquiry must be in the presence of or after notice to the assessee. Confidential inquiry can be made and taken into account⁸³.

79. A.I.R. 1937 Lah. 721.

80. 1944 I.T.R. 458.

^{80A}. 1944 I.T.R. 458. A.I.R. 1930 Pat. 14 & 127.

A.I.R. 1939 Mad. 371. A.I.R. 1936 Lah. 750.

81. A.I.R. 1939 Mad. 371.

A.I.R. 1940 Sind 92.

A.I.R. 1937 P.C. 133. A.I.R. 1938 Lah. 867.

A.I.R. 1944 Lah. 353 (2)

A.I.R. 1933 P.C. 108 guesswork permitted.

A.I.R. 1945 Cal. 62. Contra.

A.I.R. 1936 All. 286.

82. A.I.R. 1937 Lah. 721.

83 1944 I.T.R. 458 See also footnote 81.

The assessing authority can take into consideration, local knowledge and repute in regard to the assessee's circumstances ⁸⁴ and the position occupied by the dealer in regard to business ⁸⁵.

But the appellate or revisional authority is not entitled to make inquiries much less behind the back of the assessee except to the extent permitted by G. S. T. R. 14-A. ⁸⁶.

An assessment made even without conducting local enquiry may be an assessment to the best of judgment ⁸⁷ *if there are other materials*. An assessment based entirely on local reputation and conditions of business is unsafe though power to act on local inquiry is available under the Act and rules ⁸⁸.

(2) Materials disclosed by accounts and documents, evidence tendered by assessee and evidence and materials produced by the assessee in pursuance of the direction of the assessing authority can also be taken into account. (*See discussion above.*)

(3) The presumptions arising from non-production of documents and accounts and failure to answer questions can also be considered under Sections 114, ill. (g) and (h), Evidence Act. (*See discussion above.*)

(4) Since the assessing authority can summon persons and documents and gather information from dealers (Section 14; G.S. T.R. 24 & 25), the evidence and materials so gathered can also be taken into account ⁸⁹. He can examine officers or even members of the public ⁹⁰.

(5) Returns, accounts and assessments for previous years are also materials to base such assessment ⁹¹. Apart from the presumption of continuity of business, the turnover and assessment in the previous year would afford some evidence which will stand till displaced by satisfactory evidence by the assessee ⁹².

(6) Capital invested, volume of business ⁹³, profit percentage of previous and subsequent years shown by the dealer or even by other businessmen in the line can also be used as materials to base assessment to best of judgment. The average profit can be estimated

84. A.I.R. 1937 P.C. 133.

85. A.I.R. 1934 Nag. 183 at page 185. Officer's order assessee richest in District; assessment upheld by Privy Council in A.I.R. 1937 P.C. 133. A.I.R. 1933 Oudh 396. "Assessee biggest General merchant" order upheld.

86. A.I.R. 1936 All. 286 (S.B.)

87. A.I.R. 1937 P.C. 133. Officer taking local repute into consideration. *See under "Contents of Judgment."*

88. 1939 I.T.R. 607. It was held vitiated under Income-Tax Act.

89. A.I.R. 1939 Mad. 371.

90. A.I.R. 1926 Lah. 233. Officer or members of public

91. A.I.R. 1930 Ran. 33. A.I.R. 1937 P.C. 133.

A.I.R. 1936 All. 286 F.B. A.I.R. 1934 All. 559 at p. 562.

In A.I.R. 1926 Lah. 161.—held justifiable order-income last year Rs. no reason shown for diminution.

See also A.I.R. 1927 Nag. 282.

92. A.I.R. 1936 All. 286 *Per* Sulaiman J.

93. A.I.R. 1933 P. C. 108.

and the sales turnover can be determined with reference to purchases by adding a flat rate for profit ⁹⁴.

Sometimes purchases may be covered by bills and total purchase turnover can be verified and by adding a margin for profit, the annual sales turnover can be determined.

(7) The material or evidence gathered or impression formed by entry into shops, godown, etc., and by inspection of accounts, registers, goods, etc., would also offer some guide. (Section 14.) For instance, by checking daily sales by surprise inspection, the total turnover can be easily calculated in the case of coffee hotels, grocery or shandy business, etc.

(8) The style of living of the assessee and his acquisition of property ⁹⁵ would be an index of the prosperity or otherwise of the business.

(9) By cross checking the accounts of other wholesale dealers, the purchase turnover of their constituent dealers can be determined and sales turnover can be calculated by allowing a margin for profit.

(10) Income-Tax assessment papers would also be useful. But in view of Section 54, Income-Tax Act, it would not be possible for authorities acting under this Act to get at Income-Tax assessment papers. ^{95-A}

(b) Opportunity to rebut

When an officer proposes to act and base his estimate of a dealer's turnover on materials gathered by him on inquiry or otherwise, natural justice demands though there is no such statutory provision, that he (the assessing authority) should draw the assessee's attention to them (the materials) before making the order of assessment and give the dealer a reasonable opportunity to meet the case ⁹⁶. The assessee may show that the authority has been misinformed and that the information is incorrect ⁹⁶ and even displace the estimate of the authority by adducing evidence ⁹⁷. The assessing authority need not however

94. A.I.R. 1938 Lah. 209. Cap manufacturer 15% added to purchase turnover.

A.I.R. 1933 P.C. 198. Timber trade 33% added as profit.

1939 I.T.R. 647. Addition of profit considering profit derived by other beedi merchants.

A.I.R. 1938 All. 356. Pearl trade 60% added as profit.

A.I.R. 1936 Lah. 657 and 856. Large Turnover but low profit shown. Average profit of other businessmen in the line added.

See also A.I.R. 1937 Lah. 721.

95. A.I.R. 1938 Lah. 209 and 867.

95-A. It is very necessary that the Dominion Government be moved to

amend the Income-Tax Act and widen the scope of Sec. 54 (j) and (m) so as to permit Income-Tax authorities to disclose the information in their possession to authorities acting under this Act. In fact, to prevent evasion of Dominion and Provincial Taxes, it must be permissible for taxing authorities to call for assessment papers mutually. The Cochin Sales Tax Act provides for Income-Tax papers being made available for Sales Tax purposes

96. A.I.R. 1939 Mad. 371. A.I.R. 1944 Lahore 353 (2); A.I.R. 1940 Sind 92. A.I.R. 1945 Cal. 62; 1944 I.T.R. 458.

97. A.I.R. 1933 P.C. 108. and A.I.R. 1937 Lah. 721.

disclose the source of information⁹⁸ or the names of the informants.⁹⁸ The assessee is not entitled to demand copies of the confidential statements⁹⁹ in the possession of the assessing authority nor insist that the informants should be called and submitted for cross-examination⁹⁹.

(c) Judgment

Under the amended rules the assessing authority is empowered to assess the tax or taxes under Section 3, 5 or in notification under Section 6 and also the amount collected by dealer as taxes but withheld from Government (T.R. 11, 13), etc.

The words "to the best of judgment" means "as best as one can"¹⁰⁰. It is not a discretion but a duty that is vested in the officer in exercising judgment. The term 'Judgment' imports consideration of something and not exercise of caprice.¹⁰¹ It is thus of paramount importance that assessment to the best of Judgment is based on some material or data.¹⁰² (See discussion above.) It ought not to be based on mere assumption¹⁰² or private opinion¹⁰³ or fancy or humour of the officer¹⁰⁴ nor is such assessment by way of penalty justifiable¹⁰².

It is however incorrect to say, that the assessment must proceed on judicial principles, and only on evidence allowed by law.¹⁰⁵ No burden is imposed on the taxing authority to prove by positive evidence that the figure at which he assesses is the correct figure.¹⁰⁶ The exact amount of turnover is a matter peculiarly within the knowledge of a dealer under Section 105, Evidence Act.^{106A} The assessing authority is not in the position of a litigant in a civil case. The true principle is set out in a judgment of the Judicial Committee.¹⁰⁷ The assessment may be guesswork but it must be honest guesswork. The assessing authority must not act dishonestly, capriciously, or vindictively.¹⁰⁸ He must make what he honestly believes a fair estimate, of the proper figure of assessment.¹⁰⁷ The judgment

98. 1944 I.T.R. 458.

99. A.I.R. 1940 Sind 92.

100. A.I.R. 1931 Ran. 194 (FB)

101. A.I.R. 1939 Mad. 371 judgment means consideration of facts and in circumstances of assessee.

102. A.I.R. 1934 Allah. 559 at p. 563.

103. A.I.R. 1931 Allah. 23.

A.I.R. 1932 Rang. 66.

A.I.R. 1926 Lah. 161.

104. A.I.R. 1930 Ran. 33.

105. A.I.R. 1931 Ran. 194 FB.

No judicial discretion-view approved in A.I.R. 1937 P.C. 133.

A.I.R. 1937 Lah. 721; A.I.R. 1940 Sind 92.

106. A.I.R. 1937 Lah. 721.

9 I.T.C. 178; A.I.R. 1936 Lah. 856.—No flaw in accounts. Addition for low profit justified.

106A See 1948 (2) M. L. J. 93 case under present Act.

107. A.I.R. 1937 P.C. 133.

A.I.R. 1933 P.C. 108 guesswork permitted—assessee not displacing it.

A.I.R. 1938 Lah. 876.

A.I.R. 1940 Nag. 88.

108. A.I.R. 1939 Mad. 371.

must necessarily be arbitrary to some extent but it must be based on justice ¹⁰⁹ and equity.

Contents of Judgment

In the present Act, appeal lies against best judgment assessment and it is necessary that the materials on which the assessment is founded must be embodied in the order ¹¹⁰ so that the appellate authority may know with precision the material basis of the order of assessment.¹¹¹ It may also be noticed that Rule 14 of Turnover Rules provides that the assessing authority shall record his reasons for his conclusion and serve a copy of it on the dealers and it is reasonable to hold that a note of the results and details of inquiry must be placed on record.¹¹²

Findings of fact by assessing authorities

Appellate and Revisional authorities constituted under this Act can certainly go into facts, and set aside findings of assessing authorities. But, as taxing authorities are Judges of fact, their findings are not liable to be set aside by any outside authority like the Civil Court on the ground of meagreness of materials unless the impugned finding is capricious, dishonest, injudicious or without jurisdiction or is based on *absolute paucity* of materials, or is due to the assessing authority misdirecting himself on a question of law.¹¹³ (See commentaries to Sections 17 and 18 "maintainability of suits to set aside assessments").

Assessment of license fee—Best judgment

The principles stated above may apply with modifications in determination of turnover for purpose of license fee. (See G.S.T.R. 6 and "Licensing" under "Analytical study of Taxation law" Introduction.)

109. A.I.R. 1931 Lah. 87.

110. A.I.R. 1939 Mad. 371.

In a case decided under the Income-Tax Act before amendment in 1939, it was held that the assessing authority need not record the results and details of inquiry (A.I.R. 1937 P.C. 133). Similarly an assessment to best of judgment merely mentioning that on local inquiry assessee is found to be a very rich man, and that the authority estimates his (assessee's) income at a particular sum was held to be sufficient compliance (Footnote 85) with the Income-Tax Act though the results or details of inquiry were not placed on record. These decisions are inapplicable even to the present amended Income-Tax Act, which provides a right of appeal even in best judgment assessments.

The decision seems to be based on the ground that the assessing authority is the *sole Judge* or arbiter in best judgment assessments in respect of which appeals were barred under the unamended Income-Tax Act.

111. A.I.R. 1940 Sind 92.

112. A.I.R. 1934 Nag. 183 (2).

113. A.I.R. 1940 P.C. 230.

A.I.R. 1945 Mad. 513.

A.I.R. 1937 Lah. 721.

A.I.R. 1937 Mad. 241.

A.I.R. 1935 Lah. 840 and 841.

A.I.R. 1938 Lah. 551.

A.I.R. 1932 Lah. 178.

A.I.R. 1941 Oudh 279 & 445 (sufficiency of evidence one of fact).

A.I.R. 1933 P.C. 188 Principle of flat rate conceded. Rate is for officer to decide.

REALISATION OF TAX**GENERAL NOTE**

Tax is realised when it is either voluntarily paid or recovered by process of law.

SECTION 10**PAYMENT AND RECOVERY OF TAX**

10. The tax assessed under this Act shall be paid in such manner and in such instalments, if any, and within such time, as may be specified in the notice of assessment, not being less than fifteen days from the date of service of the notice. In default of such payment, the whole of the amount then remaining due may be recovered as if it were an arrear of land revenue.

Legislative changes.—Instead of the only mode of payment in Government treasury mentioned in the Bill as amended by the Select Committee in 1939, in the Act as it emerged in the Legislative Assembly, four modes are mentioned. The word 'may' was substituted for the word 'shall' in the words "shall be recovered."

Summary of Section and Relevant Rules and Forms.—The section deals with payment of tax and its recovery in case of default.

See T.R. 10 (annual system) Provisional.

„ T.R. 12 (annual system) Final.

„ T.R. 13 (Monthly system).

„ T.R. 15 (2) (Hides and skins).

Manner of Payment.—*See* Forms A-2, B & B-I by cheque or to headman or to treasury or bill collector.

Payment by cheque.—*See* G.S.T.R. 31.

Instalments.—*See* T.R. 13 above monthly—

Time allowed and default.—Not less than 15 days from date of service must be allowed for payment of tax, Form A-2 allows 21 days. Notice allowing less than 15 days is illegal². In case of default, recovery of tax may be as if it were an arrear of land revenue.

Licence Fee.—Only tax is recoverable as arrear of land revenue—A licence fee is not so recoverable.

Payment.—If date fixed for payment expires on a Sunday or other holiday³ payment can be made the next day

1. Ss. 45 and 46, Income-Tax Act.
2. A.I.R. 1945 Bom. 316.

3. Ss. 4 & 11, Madras General
Clauses Act.

In default.—Default is failure to pay. It may be wilful or it may be due to forgetfulness or negligence to pay the tax.

May be recovered.—The mode of recovery need not necessarily be as if the tax were an arrear of land revenue. Recovery by the procedure prescribed in the Madras Revenue Recovery Act is one of the modes of realising the tax. The Crown can even sue as on a debt within a period of 6 years (Art. 120, Limitation Act⁴) get a decree and realise the debt by attachment of property as an ordinary debt. Thirdly, the tax can after 1st January 1948 be recovered also as fine by a Magistrate on conviction under Section 15 (b) or (d). A second aspect is that the whole amount need not necessarily be recovered. Recovery may be a matter of discretion.⁵

As if it were.—The use of the words “as if it were” shows that the demand of tax does not stand in the same position as arrear of land revenue. Unlike land revenue the tax is not declared to be a first charge. So attachment and sale of land for recovery of the tax does not free the land from any charge, or mortgage already created on the land.⁶ “Where right has been already created (as in a mortgage) in favour of a subject before the right of the Crown commences”, the Crown is not entitled to any preferential treatment unless the statute declares that the debt due to the Crown is a first charge. Words of this kind are absent in the present enactment. Therefore a tax under this Act is not a first charge. But the general principle of law preferring the Crown’s debt to that of the subject when both stand on the same footing, nevertheless applies.⁷ Thus the Crown has priority over other *unsecured* creditors⁸ and when the property of an assessee is attached in execution of a simple money decree and money is deposited in court, since attachment by decree-holder creates no right in property, the Crown can step in and recover any tax due to the Government⁹ without suit or attachment¹⁰.

Arrear of land revenue.—The modes of collection of land revenue are indicated in the Madras Revenue Recovery Act 2 of 1864. Under Section 5 of the Madras Revenue Recovery Act the arrear of revenue with interest and costs can be recovered by the sale of the defaulter’s

4. A.I.R. 1942 Pat. 87.

See also A.I.R. 1923 P.C. 148.

5. See also Premier’s Speech in 1939 (Legislative Debates Vol. XII page 853).

6. Statutes declaring priority of Crown debt—see the following:—

S. 61. Provincial Insolvency Act.

S. 49. Presidency Towns Insolvency Act.

S. 230. Companies Act.

See also A.I.R. 1933 Mad. 649.

Default of Abkari contract—Sale encumbrance not freed.

7. A.I.R. 1935 Sind 232

Case under the Abkari Act.

8. A.I.R. 1937 Rang. 380 Case under Income-tax Act. A.I.R. 1936 Mad. 602: Case relating to Court Fee.

9. A.I.R. 1936 Mad. 132: Case under Motor Vehicles Taxation Act.

10. A.I.R. 1938 Mad. 360: Case under Income Tax Act, (1939). I.T.R. 411 arrears recovered by application without attachment.

movable or immovable property or by execution against the person of the defaulter.¹¹

Other Sum.—It may be noted that under Section 8-B the amount collected by a dealer is recoverable as arrear of land revenue. But licence fee or other fee like registration fee under Section 8-A is not recoverable as arrear of land revenue.

SECTION 11

APPEALS

11. (1) Any assessee objecting to an assessment made on him may, within thirty days from the date on which he was served with notice of the assessment, appeal to such authority as may be prescribed :

Provided that no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The appellate authority may, after giving the appellant an opportunity of being heard pass such order on the appeal as such authority may think fit.

(4) Every order passed in appeal under this section shall, subject to the powers of revision conferred by section 12, be final.

Relation of Act and Rules.—See G.S.T.R. 13, 14-A, 15 and 16.

Appeal.—See also under heading “Appellate and Revisional Tribunals” “Analytical Study of the Taxation Law” Introduction.

Objecting to Assessment.—The words objecting to assessment comprehend objections on various grounds, *e.g.*, that the assessee is not a dealer, that he has no taxable turnover, that goods are exempt from tax that assessee is entitled to rebate, that sales did not take place in the Madras Province, that the turnover determined is an overestimate, etc.

Appeal lies against order assessing escaped assessment (G.S.T.R. 17) or order rectifying an assessment (G.S.T.R. 18)

11. *Procedure in movable property.*
Distrainment Ss. 8 to 21 sale of movable property Ss 22 to 24.

Procedure in immovable property.
Attachment Ss. 25 to 35 and sale of immovable property Ss. 36 to 47.
Procedure in arrest Ss. 48 and 49.

Original Orders.

G. S. T. R. 13 provides that appeal lies only against original orders. Sec. 11 provides for appeal against an order of assessment which is also an original order. All orders of original authorities *viz*, orders of assessing, licensing and registering authorities, are appealable orders. The words 'original orders' are used in contradistinction to appellate orders. A. C. T. O's and Dy. C. T. O's are only original authorities—(See pages 238, 239) and they have no power to issue appellate orders. So in substance, against orders of A. C. T. O's and Dy. C. T. O's appeal lies (See page 11, Introduction).

Interim Orders.—It stands to reason that only final orders should be appealable. An interim order, for instance, an order directing a dealer to appear or directing production of accounts, may be subject to revision under Sec. 12 or G. S. T. R. 14 but is not appealable.

Appeal lies against order fixing consideration in money value (T.R. 17)

Licensing.—Appeal lies against original orders of licensing authorities, *e.g.*, declining to grant licence, declining exemption in spite of licence, order overruling objection that licence is not needed, levy of licence fee on overestimate, assessing escaped licence fee (G.S.T.R. 17) and rectifying mistake (G.S.T.R. 18).

Rebate.—Similarly appeal lies against disallowance of rebate.

Compounding.—(See G.S.T.R. 29) Appeal lies against orders declining to compound or fixing large sum of money for compounding.

Other original orders.—[G.S.T.R. 13] Failure to cancel registration [8-A (*New*)], determination of excess amount payable under Section 8-B [*New* Sec. T.R. 5 A (9)] are also orders against which appeal lies.

Fresh ground in Appeal.—Can a fresh ground be admitted by the appellate authority? Even the cases decided by High Courts under the corresponding provision of the Income-Tax Act are not unanimous.⁵ The correct view seems to be that, in exceptional cases, a fresh ground may be admitted in appeal if its omission is neither wilful nor unreasonable.⁶

Within thirty days assessment.—In determining the period of thirty days, the day on which notice of assessment was served must be excluded.⁷

Extension of time.—The present Act is a special Act, an Act taxing turnovers only, and a local Act, an Act applicable only to the Madras Province within the meaning of Section 29 of the Limitation Act and therefore, Sections 4, 9 to 18 and 22 of that Act would apply in computing the period of limitation, since the applicability of these provisions is not expressly excluded by this Act.⁸

The practical effect of the application of the provisions of the Limitation Act would be, in the first place, to permit an assessee to prefer an appeal on Monday if the period of thirty days expires on Sunday or, if the Appellate tribunal is closed, to prefer the appeal on the reopening day.⁹ Similarly, if copy of order of assessment is to be filed along with the appeal,¹⁰ the time taken in obtaining the

5. A.L.R. 1937 Lah. 830.

A.L.R. 1937 Oudh 416.

6. See Sec. 31 (2) A, Income-Tax Act, and Rule 12, Appellate Tribunal Rules (Income-Tax).

7. Sec. 9(b), Madras General Clauses Act and Sec. 12(1) of the Limitation Act. *Cp.* Sec. 66-A, Income Tax Act—exclusion of date of order.

8. The sections of Limitation Act provide for the following:—

Sec. 4. If court is closed when period expires, appeal can be presented on re-opening day.

Sec. 12. Exclusion of time in legal proceedings—obtaining copies, etc.

Sec. 18. Effect of fraud—extension of limitation period.

9. See Sec. 11 of Madras General Clauses Act. See also Sec. 12, Limitation Act.

10. See Sec. 11(2), G.S.T.R. 13 (4).

copy may have to be excluded.¹¹ Similarly, if facts call the application of Section 18 of Limitation Act, the benefit of the section would be available.

Section 5 of Limitation Act has not been made applicable. There is therefore no power to excuse delay in preferring appeal.

Notice of assessment.—See Section 10.

Satisfactory proof of payment.—Receipt showing such payment would be a satisfactory proof of the payment.

Admitted by the appellant......may be.—An assessment may be objected to in one of two ways. Either the *entire* assessment may be objected to, or non-liability may be pleaded in respect of a *portion* of assessment. Where no portion of assessment is admitted, tax need not be paid. A note may be made in the Memorandum of Appeal that tax is not admitted. Where a portion of assessment is admitted the instalment which has fallen due in respect of the admitted amount till the date of appeal has to be paid. It may be observed that under Section 10, notice of assessment may direct the assessee to pay the money due in instalments.

Object of verification.—The object of verification is to fix responsibility for the materials set forth in the grounds of appeal¹². Under the C. P. Code pleadings are verified¹³. The effect of verification is that false verification may render a party liable to be convicted under Sections 191 and 193, I. P. C.

Absence of verification—effect. If an appeal is not verified in the prescribed manner the appellate authority may reject the appeal *in limine*¹⁴.

Opportunity of being heard.—Usually, a notice would be sent to the assessee to be present in person or by pleader and address the authority in support of the grounds of appeal. On grounds of natural justice, it is desirable that the officer who hears appeal must pass order in appeal. If an officer hearing appeal is transferred, it is desirable that the succeeding officer re-opens the appeal and affords opportunity to appellant.

Such orders..... as such authority may think fit.—No limit is imposed as to the manner of disposal of appeal. The appellate authority may confirm, reduce or enhance or set aside the assessment in whole or in part or direct the assessing authority to make a fresh assessment¹⁵, or remit the case for a finding. The powers of the appellate authority are thus plenary.

11. See 4 I.T.C. 90. Case under Income-Tax Act.

Cp. Sec. 66A, Income-Tax Act, excluding time requisite for obtaining copies.

12. A.I.R. 1931 Mad. 679 (Case relating to pleadings) 43 Cal. 1001.

13. Order 6, Rule 15, C.P. Code.

14. A.I.R. 1929 Pat. 409 (under Income-Tax Act).

15. Cp. Sec. 31, Income-Tax Act.

Absence of appellant.—Appeal must nevertheless be disposed of on merits.

Review.—No inherent power to review lies¹⁶. See G.S.T.R. 17 and 18.

Withdrawal.—No such right is exercisable.¹⁶

Every order.....final.—The finality of order is subject to the interference in revision under Section 12. Finality attaches only so far as tribunals constituted under this Act are concerned and the order is open to challenge in a Civil Court¹⁷.

Under the law as it stood before 1st January, 1948, the order could be challenged in criminal prosecutions as well¹⁸. But from 1st January, 1948, the finality of order passed by tax authorities in assessment, etc., under the Act is not open to challenge in prosecutions¹⁹.

REVISION

[BEFORE

AMENDMENT.]

REVISION

SECTION 12

[AS AMENDED]

12. The Board of Revenue may, in its discretion at any time either *suo motu* or on application, call for and examine the record of any order passed by or any proceedings recorded by, any officer or person under this Act for

12. (1) The Board of Revenue may in its discretion call for and examine the record of any order passed or proceedings recorded by any authority, officer or person under the provisions of this Act, *including sub-section (2)*, for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceedings, and may pass such order in reference thereto as it thinks fit.

16. A.I.R. 1938 Lah. 741 & (1936) I.K.B. 487.

17. See under Sec. 17 and 18.

43 Bom. 221 Case under Sea Customs Act—Suit lies; 62 M.L.J. 77. Surchage Rules—suit lies.

38. Mad. 41 and A.I.R. 1935 Mad. 298(2)—Held Finality in Rule 28 Schedule IV, Municipal Act attaches only to tribunals under the Act—Civil Court's jurisdiction not shut out.

1947(1) M. L. J. 252—'Finality' in Sec. 73, Village Courts Act, held only final so far as the Village Court and Civil Court's Jurisdiction not shut out.

18. 1946 (2) M.L.J. 461, and 1947(2) M.L.J. short Notes 12. Question of non-liability to tax can be gone into in Criminal Court in a prosecution under Sec. 15 (case under present Act.)

19. See Sec. 16-A of the present Act.

[BEFORE
AMENDMENT]

AS AMENDED—*contd.*

—*contd.*

the purpose of satisfying itself as to the legality, or propriety of such order, or as to the regularity of such proceedings, and may pass such order in reference thereto as it thinks fit.

Nothing contained in this section shall apply to the orders or proceedings of any Court or Magistrate.

(2) Powers of the nature referred to in sub-section (1) may also be exercised by such authority or officer and in such class of cases as may be prescribed, including cases where an inferior authority or officer has exercised its or his powers under this sub-section.

(3) The powers conferred by sub-sections (1) and (2) may be exercised by the Board of Revenue or by the authority or officer concerned, as the case may be, *suo motu* at any time, or on application preferred within six months of the passing or recording of the order or proceedings in question.

(4) Nothing contained in this section shall apply to the orders or proceedings of any Court or Magistrate.”

Effect of Amendment of 1947.

The amendment makes statutory provision for the exercise of powers of revision by authorities other than the Board of Revenue and also prescribes a period of limitation, namely, six months, for the making of applications for revision by parties.¹

Relation of Act and Rules.—See G.S.T.R. 14 to 16.

See also under heading “Appellate and Revisional Tribunals. “Analytical Study of the Taxation Law”, Introduction.

May in its discretion.—Interference in revision is only discretionary. There is no statutory right on the part of an assessee, to claim interference. The discretion vested is, of course, not arbitrary

1. Notes on clauses to Bill dated 30-9-47.

discretion. Where interference would hinder, and not promote justice, the Board would not interfere.

Interference in revision—need to approach lower authority.—On the principle that a revisional authority will not interfere when another remedy is open, it seems that the Board will not ordinarily interfere with an assessment, if an appeal could be, but not, filed under Section 11. The procedure under Section 11 must be exhausted before interference in revision is sought. But, jurisdiction to interfere in revision with assessment, even when no appeal is filed, is not ousted and in extraordinary cases, the Board may, interfere, even when the appellate authority is not approached.

Record or any order . . . or proceeding.—The words used in the section are very comprehensive. All recorded proceedings are liable to be interfered in revision whether or not appeal lies.

Legality or propriety or regularity of such order ².—The power of examination by the Board seems to extend both to the law and to the facts applicable to the case before it. The Board has to satisfy itself not only whether an order or proceeding is legal, but whether it is proper or regular in the circumstances of the case.

Such order as it thinks fit.—The prime object of the Legislature seems to be to see that justice is done ³. Mere illegality may not be sufficient to call for interference in revision unless prejudice is made out.

Clause (2), Against orders of original authorities, revision lies to Commercial Tax Officers [G.S.T.R. 14].

Against the appellate orders of Commercial Tax Officers under G.S.T.R. 13, a further revision lies to the Deputy Commissioner if the turnover does not exceed Rs. 20,000. [G.S.T.R. 14.]

The sub-clause statutorily provides for the exercise of these revisional powers by Commercial Tax Officers and Deputy Commissioners.

Clause (3), *Suo motu* or on application.—Interference by revisional authority may be of “its own accord” at any time, unfettered by any period of limitation or within six months on the motion of the aggrieved party. The application contemplated is application by the aggrieved party ⁴. But if the case really calls for revision, on the motion of any *third* party, the Board may *suo motu* interfere unfettered by limitation ⁵.

2. A.I.R. 1924 Mad. 586. (Case under C.P.C.)

3. A.I.R. 1932 Mad. 157 and A.I.R. 1935 Mad. 89 (Cases relating to revision under C.P.C.)

4. 24 All 443. See also A.I.R. 1933 All. 678 case under Cr.P.C.

5. A.I.R. 1933 All. 678.

Clause (4), Orders or proceeding of any Court or Magistrate.—See Sections 15 and 19 (3) and G.S.T.R. Rule 32 for proceedings before Magistrates.

Proceedings in Civil and Criminal courts are subject to the ordinary incidents of Civil and Criminal Procedure with right of appeal and with ultimate powers of revision in the High Court ⁶. The Board of Revenue has no power of revision over the ordinary tribunals of the land.

ACCOUNTS OF DEALERS AND LICENSEES.

[BEFORE
AMENDMENT]

SECTION 13.

[AS AMENDED]

13. Every dealer and every person licensed under Section 8 shall keep and maintain a true and correct account showing the value of the goods sold and bought by him; and in case the accounts maintained in the ordinary course, do not show the same in an intelligible form, he shall maintain a true and correct account in such form as may be prescribed in this behalf:

Provided that this section shall not apply to petty dealers whose business is such as is not likely to make them liable to taxation under this Act.

13. Every *registered* dealer and every person licensed under this Act shall keep and maintain a true and correct account *in one of the languages of the Province, namely T a m i l , Telugu, Malayalam, Kannada or Hindustani or in English, showing the goods sold and bought by him, and the value thereof, goods of each of the kinds specified in Section 3, sub-section (2), being shown separately; and in case the accounts maintained in the ordinary course, do not show the same in an intelligible form, he shall maintain a true and correct account in such form as may be prescribed in this behalf.*

6. See Section 115, C.P.C. (Civil Revision). Section 96 and order XLII, and Section 100 and Order XLII (Civil first and second Appeals.)

Section 435 to 439, Cr.P.C. (Criminal Revision.).

Section 404 to 431, Cr.P.C. (Criminal Appeal.)

Summary and effect of amendment.

[*Old*]

I. Every dealer (the term including licensees under Section 5 or Section 6 and persons entitled to rebate under Section 7), and all *licensees* under Section 8 were obliged to maintain accounts. But *petty* dealers (with turnover not exceeding Rs. 10,000) were exempt from the operation of the Section.

[*New*]

(1) All registered dealers (dealers with turnover of Rs. 7,500 and over who are *compulsorily* registrable, and dealers with less turnover who may register themselves) and all *licensees* have to maintain accounts.

Even dealers with turnover of Rs. 7,500 and over have to maintain accounts.

Unregistered dealers (with turnover not exceeding Rs. 7,500) are not obliged to maintain accounts.

II. All licensees have to maintain accounts. The term dealers includes licensees. So there is no change in the law.

III. [*New*] Accounts may be maintained in any of the specified Provincial languages.

This was not specifically provided in the unamended section, though in some cases accounts were being maintained in the regional Provincial languages even before the Amending Act.

IV. Under the law before and after amendment, it is provided that accounts must show the value of goods sold and bought.

V. [*New*] Under the amended section, accounts must separately show the sale or purchase value, in respect of the kinds of articles specified in Section 3 (2). In other words, the value of luxury articles bought and sold must be separately shown to facilitate assessment at enhanced rates as provided in the Amended Act. "This amendment is consequential on the taxation of different articles at different rates"¹.

VI. [*New*] In the case of licensed agents, it may be noted, accounts must be maintained in the prescribed form (*See* Forms X and XI).

VII. In the case of dealers, normally if accounts do not show the sale or purchase price in an intelligible form, the accounts must be maintained in the prescribed form if any form is prescribed. This is the law both before and after the amendment.

Relation of Section and relevant rules

This section and G.S.T.R. 33 provide for maintenance of accounts in form 'prescribed'. Form has been prescribed only in the case of licensees under Section 8 (*See* Forms X and XI). (*See* also condition 7 in Form V).

¹; Notes on clauses to the Amending Bill.

T.R. 7, 9, 11, 13 and 15 provide for scrutiny of accounts of dealers. G.S.T.R. 6 (11) provides for scrutiny of accounts of licensees. G.S.T.R. 11 and 12 provide for preservation of vouchers and maintenance of separate accounts.

For reference to Accounts—See T.R. 5 (1) (a) (discount), T.R. 5 (1) (b) (Goods returned); T.R. 5 (1) (c) Accommodation dealer; T.R. 5 (1) (d) Goods under Section 4.

See also Commentaries to Section 9.—See also “Duties and concessions available to Dealers and Licensees.” under “Analytical Study of the Taxation Law” Introduction.

COMMENTS

Registered dealers.—See Section 2 (g-1) and Section 8-A.

A dealer compulsorily registrable (having a turnover of Rs. 7,500 and over) has to maintain accounts. Similarly, a dealer who anticipates a turnover of Rs. 7,500 and over or who though having less than Rs. 7,500 as turnover decides to register himself is obliged to maintain accounts.

Licensees.—Both before and after the Amending Act all *licensees* are obliged to maintain accounts.

True and Correct.—A true and correct account for the purpose of this Act would mean an account reflecting all the transactions both on the credit and debit side and showing intelligibly the value of the goods sold and bought. An account which does not give a complete or correct version of actual business was held to be an unreliable account². An agent under Section 8 must have bills (condition 8 of Form V). Bills, invoices, stock registers, etc., are necessary to check account books. Similarly vouchers are necessary, and in their absence the accounts are no better than the mere word of the assessee³. Vouchers relating to stocks, deliveries, purchases, output sales, etc., are necessary and they must be preserved for two years (G.S.T.R. II).

In one of the languages specified.—Sindhi and Gujarati are not specified. The reason for omission of these two languages may be that they are not the regional languages of this Province. The object in compelling maintenance of accounts in a regional language is to facilitate checking up by officers. Government, however, decided not to enforce the provision till the end of September 1948⁴ in view of numerous representations that the new provision would cause considerable hardship. In their latest communique Government have ordered that the concession of not insisting on the compliance with

2. A.I.R. 1936 Lah. 838. Case under Income-Tax Act.

3. A.I.R. 1936 Lah. 856. Case under Income-Tax Act.

4. Finance Minister agreed to consi-

der inclusion of Gujarati later (Legislative Assembly Debates 19-12-47). See also Press note on 20-1-48. See also Finance Minister's speech on 12th July 1948 in the Legislative Assembly.

this provision be continued until further orders, pending consideration of the question of amending the Act further so as to permit the maintenance of accounts in any language (Communique published in newspapers on 7-10-1948.)

Goods sold and bought and value.—Accounts should show the value of every kind of goods bought and sold irrespective of the question whether the articles are entitled to exemption, reduction or modification partially or wholly under Sections 5 to 8.

Each of the kinds specified in Section 3 (2).—The goods specified in Section 3 (2) are subject to differential tax rates. Similarly goods in Section 5 are subject to different rates. Each of the kinds must be separately shown. Thus, motor goods taxed at 6 pies in the rupee should not be combined with electrical goods, but within the same kind, each of the goods need not be separately shown. So motor vehicles and accessories may be shown without being allotted different pages in the accounts.

Different accounts.—A person dealing in normally taxable goods and transactions, and also in goods or transactions entitled to benefit of Section 4, 5 or 8 must maintain *separate accounts* for goods or transactions, under each of the sections. [(G.S.T.R. 12 (1)).]

A dealer in hides and skins must maintain separate accounts in respect of goods tanned in the Province and outside [G.S.T.R. 12 (2).]

Separate accounts of a licensee under Section 8 in respect of transactions covered by licence and transactions not covered by licence is also necessary. [G.S.T.R. 12 (3).]

A dealer dealing in ordinarily taxable goods and holding also a license for bullion and specie, or for non-handspun cotton yarn, or for hides and skins is dealing in different goods subject to *different rates* of tax. The rules therefore provide for *separate accounts* being maintained. [G.S.T.R. 12 (4) (*New*).]

Vouchers for different goods.—Vouchers of each kind of goods must be serially numbered separately (G.S.T.R. 11).

Licensee's Accounts (Contents of).—Condition 3 in Form II (Bullion and specie). Condition 2 in Form III. (Cotton, handspun yarn, handloom cloth) and condition 1 in Form IV (Hides and skins) show that the names and addresses of the vendors of licensees and purchasers from them (licensees) must be shown.

Agent under Section 8.—The Forms of Account X and XI have been prepared with meticulous care to prevent evasion (*see* Section 8 Commentaries). The accounts must specify the names of buyers, sellers, the dates of transactions, the incidental charges incurred, commission receivable, etc. (*See* Forms V, X & XI.)

Absence of Accounts and Deductions.—[*See* T.R. 5 (1) (a) to (b) discount, goods returned, accommodation sales, excepted goods.] In the absence of entries in accounts, the deductions are not allowable,

Contravening terms of licence.—In the absence of accounts or in view of the contravention of the terms of licence regarding accounts, by licensees under Section 5 (*see* Forms II, III, IV), the licensee is taxable (Section 6-A and G.S.T.R. 8).

Licensee under Section 8.—In the absence of accounts or in view of the contravention of the terms regarding accounts the question whether a licensee is taxable is a doubtful point. *See* Section 8 and Section 6-A Commentaries.

Accounts of Butchers.—It is sufficient if accounts of butchers show the numbers of sheep or goat bought and the quantity of mutton sold with prices therefor.

Accounts of petty dealers (with turnover not exceeding Rs. 7,500), Even if defective such accounts ought not to be rejected.⁵ *See* Commentaries to Section 9.

Certified Accounts.—Accounts certified by Registered Accountants should ordinarily be accepted as correct (Communique issued by the Ministry).

Method of Accounting.—Broadly two systems of accounting are common. (A) the mercantile system of entering all transactions *as and when they take place* irrespective of the time of realisation of sale proceeds, and (B) the cash system of entering transactions only when money is realised for sales, the transaction being taken into suspense account till such realisation.⁶

Day books, ledgers, stock registers, credit books, etc., are some of the accounts maintained by dealers.

Since total sales have to be ascertained irrespective of the realisation of proceeds of sale, in the case of the cash system, the sales disclosed in suspense account and credit sales should be included. In the case of traders, even when for domestic consumption, grocery articles, etc., have been taken, they must also to be included. The total quantity of goods sold is ascertainable by adding the total purchases made during the year to the original stock at the beginning of the year and from the total thus arrived at, deducting the quantity of unsold stock at the close of the year.

This Act taxes sales, and profit or loss is immaterial. Profit may be ascertained to check the correctness of the entries in accounts. To ascertain gross profit, the sales turnover, the purchase turnover, the opening stock at the beginning of the year, as contrasted with the closing stock have to be taken into account. The excess represented by sales turnover over purchase turnover, in money value, is profit. To this, must be added the difference in value between the closing and the opening stock. In other words, the closing and opening stock must be

5. *See* A.I.R. 1926 Lah. 161.

6. *See* A.I.R. 1935 Lah. 12.

A.I.R. 1937 Lah. 338.

A.I.R. 1939 All. 7.

A.I.R. 1929 All. 819.

A.I.R. 1927 Mad. 841.

A.I.R. 1936 P.C. 269.

A.I.R. 1945 All. 102.

uniformly valued at either the market price or purchase price, and to the extent the value of closing stock exceeds the value of opening stock, there is an accretion to the profit. It is profit in kind and must also be added.

SECTION 14

POWERS OF OFFICERS

Powers to order production of accounts, etc.

14. (1) Any officer empowered by the Provincial Government in this behalf, may, for the purposes of this Act, require any dealer carrying on business in any kind of goods to produce before him the accounts and other documents, and to furnish any other information relating to such business.

(2) All accounts and registers maintained by dealers in the ordinary course of their business, the goods in their possession and their offices, shops, godowns, vessels or vehicles shall be open to inspection at all reasonable times by such officers as may be authorized in this behalf.

(3) Any such officer shall have power to enter, for the purpose referred to in sub-section (2), any office, shop, godown, vessel, vehicle or any other place in which business is done.

Summary

[Relation of Act and Rules]

There are three sub-clauses in the section. Clause 1 deals with the *production* of accounts or other documents or furnishing of information. Clause 2 deals with the power of *inspection* by officers while Clause 3 deals with the power of *entry* by officers. (See Notification II.)

Production of accounts, etc. (Clause 1)

- (1) All A.C.T.O's, Dy. C.T.O's and C.T.O's can act [See Notification II clause 1]
- (2) The officer *may act only for the purpose of this Act.*
- (3) The power exercisable is to require a *dealer*-(a) to produce accounts or other documents, and (b) to furnish other information relating to such business by issuing summons in Form IX.

Power of Inspection (Clause 2)²

(1) All A.C.T.O's, Dy. C.T.O.'s and C.T.O.'s, all Sub-Inspectors of Excise and Police and above; all revenue officials not below Revenue Inspector can exercise powers. Notification II, clause 3.

(2) The following can be inspected: (a) accounts and registers maintained in the ordinary course of business by a dealer, (b) goods in the possession of dealers, (c) offices, shops, godowns, vessels, and vehicles of a dealer.

(3) The inspection is to be at reasonable times.

Power of entry (Clause 3)³

(1) The officers authorized under Sub-clause (2) above can exercise the power.

(2) Power is confined to entering into the office, shop, godown, vessel, vehicle or any other place in which business is done.

(3) The power is to be exercised for the purpose referred to in Sub-clause (2) (i.e., inspection)

COMMENTS

See under heading "Powers and Duties of Authorities", "Analytical Study of the Taxation Law", pages xliii to xlvii, *Introduction*.

Officer empowered.—It does not appear that the power granted to an officer to act under this sub-section can be delegated by the officer to his subordinates.⁴

Provincial Government.—See Section 3 (43), General Clauses Act and commentary to Section 3.

For the purpose of the act.—Exercise of power under sub-section (1) can be only for the purpose of assessment, licensing, rebate, etc.

Business.—See commentary to Section 2 (b).

Dealer.—See commentary to Section 2 (b).

Any kind of goods.—All persons who carry on business in any kind of goods including goods exempted under this Act, can be called upon to produce accounts or to furnish any information required relating to the business.

2. *Cp.* Sec. 39, Income-tax Act.

3. Unlike the Income-tax Act the present Act confers power of entry for inspection. While an Income-tax Officer entering the premises of an assessee for inspection would be committing the offence of trespass (A.I.R. 1926 Lah. 326) an officer entering premises under this Act commits no offence.

4. The section was criticised in the Legislative Council as giving almost

"inquisitorial powers" to the officers under the Act and in order to safeguard misuse of power under the section, an amendment was moved that the officer so empowered should not be below the rank of a Revenue Divisional Officer. On the assurance of the Premier that the Government would pay attention to the matter in choosing officers the amendment was withdrawn.

Accounts, Registers and other documents.—A document is any “matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or may be used as evidence of that matter”.⁵

Vouchers, receipts, registers, bills are all open to inspection.—Section 13 and G.S.T.R. 11 and 12 set out what kind of account and documents should be kept by a dealer. Registers are also open to inspection.

Godown.—Godown or warehouse is the place where goods are stored.

Vessels.—The word means ships or boats. Right of inspecting ships or boats in which goods are brought is also conferred.

Vehicles.—The term means “carriages of any kind used on land.” For instance, a motor lorry or train which may carry goods is open to inspection.

Reasonable times.—Inspection is to take place at reasonable times. For instance, usually the inspection of a shop would be during hours when it is likely to be open.

Seizure.—No power to seize documents is conferred.⁶

SECTION 14-A (NEW)

NON-RESIDENT DEALERS

Act to apply with certain modifications and additions.

14-A. In the case of any person carrying on the business of buying or selling goods in the Province but residing outside it (hereinafter in this section referred to as a “non-resident”), the provisions of this Act shall apply subject to the following modifications and additions, namely:—

(i) In respect of the business of the non-resident, his agent residing in the Province shall be deemed to be the dealer.

(ii) The agent of a non-resident shall be assessed to tax or taxes under this Act at the rate or rates leviable thereunder in respect of the business of such non-resident in which the agent is concerned, irrespective of the amount of the turnover of such business being less than the minimum specified in Section 3, sub-section (3).

5. Sec. 3(9), Madras General Clauses Act.

6. In the Sales Tax Acts of Central Provinces, West Bengal, Orissa and

Bombay, the assessing authority can seize documents after recording reasons if possible evasion of tax is suspected.

(iii) *Without prejudice to his other rights, any agent of a non-resident who is assessed under this Act in respect of the business of such non-resident may retain out of any moneys payable to the non-resident by the agent, a sum equal to the amount of the tax or taxes assessed on or paid by the agent.*

(iv) *Where no tax would have been payable by the non-resident in respect of his business in the Province by reason of the turnover thereof being less than the minimum specified in Section 3, sub-section (3), he shall be entitled to have the amount of the tax or taxes paid by his agent refunded to him on application made to the assessing authority concerned, or where more than one such authority is concerned, to such one of the authorities as may be authorized in this behalf by the Provincial Government by general or special order.*

(v) *Such application shall be made within twelve months from the end of the year in which payment was made by or on behalf of the non-resident of the tax or taxes or any part thereof.*

Effect of Amendment

"Doubts having arisen as to how far the agents of non-resident dealers are taxable under the Act as it now stands, it is proposed to make clear provision in regard to the matter. New Section 14-A sets out in what respects exactly the Act should be modified in its application to non-resident dealers".¹

History of the Amendment

In 1940, a Communique was issued that all persons resident in the Province looking after the interests of the foreign (non-resident) seller, are dealers. In March 1941, another Communique was issued clarifying the position that in the view of the Government, apart from mercantile agents, agents employed by non-residents (i) for handling goods for consignment or otherwise, (ii) for handling documents of title relating to goods, (iii) or in connection with the payment of the sale price of goods or as such guarantor for such collection or payment, are also agents who are taxable. The effect of the Communique was to tax Banks, Port Trust authorities and transport agencies. In view of much agitation the operation of this extended interpretation was postponed. In the Amending Bill published in the *Fort St. George Gazette* on the 30th September, an explanation and a proviso were

1. Notes on clauses to Bill dated 30-9-47.

added [see Foot-note 13] with the object of roping in Banks and Transport agencies within this Act. The Select Committee omitted the explanation and the proviso.

Sec. 14-A and Sec. 8

This Section applies to agents of non-resident principals while Section 8 applies to agents of resident principals.

Summary

I. Non-resident dealers (dealers residing outside the Province) are also subject to this Act generally. (Opening portion of Section 14-A)

II. The modifications and additions mentioned in sub-sections (i) to (v) apply to them and the sub-sections provide for—

(a) assessability and leviability of tax or taxes on *resident agents* (i & ii)

(b) (i) payment of tax or taxes by agent or agents irrespective of whether the turnover *individually* is within or above the non-taxable minimum, (ii) *retention of tax* amount by agent for payment of tax or *reimbursement* by agent from principal's moneys, if tax is already paid by agent, (iii) refund of tax to principal non-resident dealer if the turnover of *entire* business is within the non-assessable minimum, by following necessary procedure.

COMMENTS

This section must be read with Section 2 (b).

Person carrying on business.—For applying the section, the person (principal) must be doing *business* within the Province but *residing* outside the Province.

All those who can be dealers can be non-resident dealer principals. The principal may be a joint family.² See also Section 2 (b) for meaning of "person".

A mere *casual transaction* of a non-resident principal does not attract this section. See Section 2 (b) under "business".

Buying and Selling.—The reference is to seller's and buyer's schemes of taxation (T.R. 4).

Subject to the following modifications and additions.—(A) The provisions of the Act apply unmodified to the extent they do not conflict with the undermentioned clauses (i) to (v) and (B) to the extent the provisions of the Act are in conflict, the *modified or additional* provisions in clauses (i) to (v) apply.

Sub-clause (i)

(i) **Agent of non-resident Principal and resident Principal.**

The General Law as set out in Section 2 (b) that the person selling or buying goods is a dealer is *modified* so far as a non-resident dealer is

concerned. In respect of the non-resident principal's business, his agent within the Province shall be deemed to be the dealer. Normally an agent of a resident principal is not a dealer. But he may be treated as dealer if he purports to have possession, and fixes the price and transfers possession to the purchaser for consideration, the purchaser paying price on the basis that the actual seller (agent) is the owner. 2 A. See Sec. 8.

Object of Section :

The object of new Section 14-A (i) [*New*] [Section 2 (b), explanation 2 (*Old*)] is " to bring the agent, responsible for the principal outside the Province, within legal jurisdiction " and thereby fix liability on the juristic principle applicable to undisclosed and unavailable principals.³ The effect of the provision is to make the agent living in the Madras Province, and doing business for a principal residing outside the Province, a dealer for the purpose of the Act and thus facilitate collection of tax from the agent. Another effect of the explanation is to permit service of notice on agents on behalf of non-resident principals.

Under the General Law, if a contract is made by an agent on behalf of a principal abroad, he is personally liable (Section 230, Contract Act). This section applies the principle to taxation in relation to principals residing outside the Province.

Section 14-A and General Law.—Section 14-A is wider than the General Law. Under the General Law (Section 230, Contract Act) only an agent in *India* of a principal *residing abroad* (outside India) is personally liable on the contract entered into by him. Section 14-A hits even an agent *residing in India* of a principal residing in *India* provided the agent is *within this Province* while the principal resides *outside the Province*. Secondly, where the agent acts on behalf of a *disclosed* principal (presumption under Section 230, Contract Act, being rebutted), *e.g.*, agent signing documents and making payments in the name of principal, the agent is not personally liable on the contract under the General Law while he is personally liable to pay the tax, as if he is the dealer under this section. So, doubt may arise as to the legality of this provision which is more comprehensive than the corresponding provision in the Contract Act in the absence of Governor-General's sanction, 'contracts' being an item in the concurrent list of subjects in the Government of India Act (See Item 10, List III, Schedule VII and Section 107 of the Government of India Act)

In respect of the business.—It is necessary that the agent must in some manner be connected with the business of the principal. So an agent of the principal on some matter unconnected with the principal's *business* is not within this section [See also Section 14 (ii)]. For meaning of "business", see Commentaries to Section 2 (b). As already considered a casual transaction is not business.

Agent and Servant—An agent brings the *principal in relation to third parties*. Even in England tendency is to enlarge the scope of the term 'agent'. Even a person with a limited discretionary power in respect of sales was held to be a mercantile agent⁴. Speaking generally an agent is one who has initiative and independent discretion. A servant employed to do a particular act only without any *discretionary power whatsoever*, is not an agent.⁵

Principle in Taxing.—In the taxation of the resident agent of a non-resident principal, the general principle is that "any person looking after the interests of a foreign seller in respect of his (seller's) business should be assessed as a dealer irrespective of whether he (the agent) had or had not hand in actual selling."⁶

Kinds of Agents affected

(i) **Express and implied agents**.—The term 'Agent' has not been defined in this Act. But the Contract Act⁷ defines an agent as "a person *employed* to do any act for another or to represent another in dealings with third parties". Thus an *auctioneer* is the agent of the vendor. An agent may be constituted by express authority⁸ or even by *implied authority*⁹ inferable from things spoken or written or from the ordinary course of dealing. Thus a person managing a shop and paying for goods out of owner's funds with the latter's knowledge is an implied agent.

(ii) **Mercantile agents**.—Mercantile agents¹⁰ are persons who in the customary course of business have authority to sell goods or purchase goods. They handle goods or documents of title relating to goods and when handling goods of non-resident principals they are within the purview of this section.¹¹ It may be noted that even under the General Law a mercantile agent in possession of goods or of documents of title can convey valid title by sale.¹²

(iii) **Agents handling goods**.—Agents handling goods for consignment or otherwise, on behalf of non-resident principals fall within this Section.¹³

(iv) **Partners**.—Partners¹⁴ are in law agents of firm for purpose of business. If a partner is residing in the Province, while other

4. *Lowther v. Harris* (1927) I.K.B. 393.

5. *Lamb v. Allenborough* 124 R.R. 192.

6. A Government's Communique in 1940.

7. Sec. 182, Contract Act.

8. Sec. 186, Contract Act.

9. Sec. 187, Contract Act.

10. Sec. 2(9), Sale of Goods Act.

11. Government's Communique in March 1941.

12. Proviso to Sec. 27, Sale of Goods Act.

13. Government's Communique in March 1941. In the Amending Bill, dated 30-9-47, an explanation was added to this clause that "any person residing in the Province who is employed or on behalf of the non-resident for facilitating in any way the carrying on of the business of such non-resident shall be deemed to be his agent." This explanation was omitted by the Select Committee.

14. S. 18, Partnership Act. See A.I.R. 1946 Sind. 129. Case under H.P.P. Ordinance.

partners are residing outside the Province, the former is within the section.

(v) **Factor, commission agent, broker, del credere agent.**—The better view is that Factors¹⁵ (agents entrusted with the possession of goods) commission agents (agents acting really for principals but apparently purchasing or selling in *their own names* and not in the name of the principals), brokers¹⁶ (agents selling or purchasing goods in the *names* of the *principals* only) and *del credere* agents or Dubash¹⁷ (agents who in consideration of extra remuneration undertake that persons with whom they enter into contracts on behalf of principals are solvent) fall within the scope of the definition when doing business for non-resident principals.

(vi) **Sub-agents.**—Even sub-agents who are appointed by agents fall within the definition, since they (sub-agents) represent the non-resident *principals* as regards third persons.¹⁸

(vii) **Agent, branch, or clerk of foreign companies.**—In the case of an incorporated company, legally resident outside the Province, an *agent* doing business in the Province on behalf of the Company is a dealer and *where* an incorporated company outside the Province does business through a branch in the Province, with a partner or clerk in the Province, the partner or clerk is a dealer for the purpose of the Act.¹⁹

(viii) **Advertising, advising, canvassing or indent agents.**—An indent agent is an itinerant representative of a principal without authority to enter into binding contracts. By virtue of notification (*see* under Notification IV) these agents even when doing business for non-resident principals are taken out of the scope of the section.

(ix) **Port Trust and Transport Agencies.**—Though they handle goods of non-resident dealers, they are only dealing in '*services*'. Further they are not agents connected with the business of non-resident principals. [*See* clause (ii) of Section 14-A.]²⁰ *See* also above under '*History of Amendment*'.

(x) **Collecting agents and guarantors other than banks.**—An agent for the collection or payment of the sale price of goods acting on behalf of a non-resident principal is within this section. Similarly a guarantor for the collection or payment of goods is affected by the section if he acts for a non-resident principal, *see* under Notification IV.

(xi) **Banks.**—Banks providing credit facilities and acting as agents of non-resident principals for collection of sale price of goods imported into the Province are not within the section. Usually when a non-resident imports goods into this Province, he sends the documents of title in respect of the goods to a bank within the Province. He also

¹⁵ *See* (1883) 25 Ch. D. 31.

¹⁶ *See* 39 All. 81. 42 Cal. 1050.

¹⁷ *See* 49 Mad. 156.

¹⁸ *See* Sec. 191 & 192, Contract Act.

¹⁹ A.I.R. 1942 Pat. 313, and

I.R. 1942 Mad. 736 (2).

draws a draft²⁰ (order to pay) or Bill of Exchange²¹ (unconditional order directing payment of money to or order of a certain person or bearer) on the buyer within the Province against the goods the payee being the Bank within the Province. The Bank is instructed to deliver the documents on payment by the buyer of the price of goods or the buyer accepting or paying the sum due on the Bill of exchange or other negotiable instrument drawn on him (the buyer).²²

In a case of this kind, though the Bank acts as agent, for the *limited* purpose of collection, it does not come within Section 14-A (i). At best, the Bank is only dealing in 'service', and is unconnected with the *business* of non-residents. See Section 14 (ii). Government have clarified the matter and issued a notification excepting banks from the operation of this section [See under Notification IV.]

Agent residing in the Province.—Only the agent resident in this Province falls within this sub-section. A non-resident agent is unaffected by the section.

Shall be deemed.—Whereas in reality or under the General Law the agent is not a *dealer*, this section requires him to be treated as if he were a dealer for the purposes of this Act.²³

Sub-clause (ii)

This sub-clause sets out two modifications to the normal rule of taxation under this Act. This sub-clause provides that, firstly, the agent is *assessable* to tax or taxes on the business of the non-resident while normally tax is *assessable* on the non-resident dealer, and secondly, that the rule of non-assessable minimum turnover (not exceeding Rs. 10,000) is inapplicable to the business.

First portion of sub-clause.—

The first portion of this sub-section specifically arms the authorities with power to *tax* agents of non-residents and thus avoid legal difficulties, though this power is already implicit in treating an agent as a dealer under clause (i). It has been made clear that the agent is taxable only in respect of the business of the *Principal*, in which he (*agent*)

20. Sec. 85A, Negotiable Instruments Act.

21. Sec. 5, Negotiable Instruments Act.

22. Sec. A.I.R. 1930 Lah. 640.

A.I.R. 1937 Lah. 566.

In the Sales Tax Amending Bill published on 30th September 1947 there was a proviso bringing banks acting for non-residents, within the section. There was much agitation against the proposal. It was contended that such a tax would be illegal, being a tax on banking and sale of *credit* which is only 'service' and not goods. The discriminatory character of such a tax as

affecting one of the many institutions dealing in *service*, while leaving untouched other institutions dealing in *service*, as, for instance, the Post Office sending goods by V. P. P. was also criticised. Thirdly, it was vehemently urged that the imposition of sales tax on banks which usually earn only a commission of 1/3 or 1/4 per cent. as collection agents, would be an intolerable burden whose effect would be to discourage banking and ultimately cripple trade and industry. In view of opposition the proviso was deleted by the Select Committee from the Bill.

23. A.I.R. 1930 P.C. 54.

is concerned. So an agent of a non-resident employed and looking after, for instance, the agricultural interests of the principal, cannot be taxed in respect of the business interests of the principal in buying or selling goods.

Tax or Taxes.—The reference is to the differential rates of tax under Section 3 (2). So an agent of a principal dealing in different goods is liable to pay taxes as mentioned in Section 3.

Business.—See Section 2 (b) Commentaries.

Second portion of sub-clause.—

The second portion of the sub-clause is aimed at preventing evasion of the tax, by agents individually showing non-taxable turnover whereby collectively also no tax is leviable. For instance A, a non-resident dealer, may have agents B, C and D within the Province. Each of the agents may have a non-taxable turnover. But collectively the total turnover may be taxable. This sub-clause therefore provides for *each* agent being assessed to tax. Thus each of the three agents B, C and D would individually pay tax on the individual turnover. If the aggregate turnover of *all agents* is less than the minimum, then the principal is entitled to a refund of the taxes paid (Clause iv). The reason behind this sub-section is that the *real* taxable dealer is A, the non-resident who should not be permitted to evade tax merely because individually each of his agents has a non-taxable turnover. See T.R. 5 (2) and commentaries.

Sub-clause (iii)

This sub-clause leaves in tact the *right* between the agent and the principal *inter se* available under the General Law²⁴ and in *addition* provides that the agent may retain out of moneys received on principal's account, and therefore *payable* to the principal, the tax or taxes assessed or *paid* by him (agent).

Under the General Law the agent may advance money, and retain out of collections payable to the principal the expenses incurred and the sum advanced.²⁵ For commissions due the agent has a lien on the property of the principal including collections received and payable to the latter.²⁶

These principles of General Law embodied in the Contract Act are extended to tax or taxes paid or payable by the agent. Strictly speaking tax paid is business expense and is covered by the General Law.²⁵ But to obviate legal difficulties a specific provision is made in this section permitting retention of money for taxes payable and reimbursement if taxes are already paid.

Without prejudice to.—Rights under the General Law stand unaffected.

²⁴ See Secs. 211 to 221 of the Contract Act.

See also commentaries to Sec. 8 under heading "*Agent and Principal*"

for summary of the relevant statutory provisions of the Contract Act.

²⁵ Sec. 217, Contract Act.

²⁶ Sec. 221, Contract Act.

In respect of the business.—This sub-clause as also sub-clauses (i), (ii) and (iv) apply only to *resident agents*, in respect of the *business* of the non-resident dealer principals in which the former are concerned.

Tax or Taxes.—The reference is to varied rates of tax (on luxury articles) prescribed in Section 3 (2) or 5, or notified under Section 6 as directed from the general tax of three pies in the rupee.

Assessed or paid by the Agent.—On assessment and *before actual payment*, the agent can retain from sums in his hands but payable to the principal the sum necessary for payment of tax. *After actual payment* of the tax or taxes from *his* (agent's) own moneys, if money payable to the principal is received or collected, he (agent) can reimburse himself by retaining an equal sum from the collections.

Sub-clauses (iv) and (v)

These sub-clauses introduce another *modification* or *addition* by permitting refund of tax to the *principal* non-resident dealer of tax paid by agent on non-assessable turnover. These sub-clauses must be read with sub-clause (ii).

When the *total turnover* of the business of the non-resident principal (aggregate turnover of business as submitted by all agents if more than one agent is employed) is less than Rs. 10,000 the tax paid by the agent or agents is refundable to the *principal* non-resident dealer.

The latter portion of this sub-clause (iv) and sub-clause (v) deal with the procedure in obtaining refund, *e.g.*, (a) the authority or authorities to whom refund applications have to be made, the assessing authority or such authority as is authorized by the Provincial Government, and (b) the period, within which such application has to be made.

Within twelve months from the end of the year.—The year mentioned is the financial year and the starting point is the end of the year and not the date of payment of tax by agent. Thus, if for 1947-48, tax has been paid by the agent on non-assessable turnover, the principal must apply for refund within 12 months from the 31st March 1948.

Other refunds under the Act.—Partial refund or rebate, *see* Section 7. Refund of licence fee. *See* "Licensing" under "Analytical Study of the Taxation Law," Introduction and G.S.T. Rules 6 (11). Refund of tax on final assessment; *see* Turnover Rule 12.

OFFENCES AND COMPOSITION ¹

GENERAL NOTE

The sections deal with offences and the penalties for offences in case of conviction and the composition of offences in case the offences are

1. Title is inserted for purpose of convenience. It does not find a place in the Act.

compounded. In short, the sections deal with proceedings in courts against assesseees and licensees under this Act even as Sections 17 and 18 deal with proceedings against officers and the Crown under this Act.

SECTION 15

Offences and Penalties

BEFORE AMENDMENT

15. Any person who—

(a) wilfully submits an untrue return or fails to submit a return as required by the provisions of this Act or the rules made thereunder, or

(b) fails to pay the tax due from him within the time allowed, or

(c) prevents or obstructs inspection or entry by any officer authorized under Section 14, in contravention of the terms thereof, or

(d) fraudulently evades the payment of any tax due under this Act, or

(e) wilfully acts in contravention of any of the provisions of this Act, shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be liable

SECTION 15

Offences and Penalties

[AS AMENDED]

15. Any person who—

(a) wilfully submits an untrue return or fails to submit a return as required by the provisions of this Act or the rules made thereunder, or

(b) fails to pay within the time allowed, any tax assessed on him or any fee due from him, under this Act, or

(c) prevents or obstructs inspection or entry by any officer authorized under Section 14, in contravention of the terms thereof, or

(d) fraudulently evades the payment of any tax assessed on him or any fee due from him under this Act, or

(e) fails to submit an application for registration as required by section 8-A, sub-section (1), or

(f) collects any amount by way of tax under this Act, in contravention of the provisions of Section 8-B, sub-section (1), or

(g) fails to pay the amounts specified in section 8-B, sub-section (2), within the prescribed time, or

(h) wilfully acts in contravention of any of the provisions of this Act,

to a fine which may extend to one thousand rupees, and where the breach is a continuing breach, to a further fine which may extend to fifty rupees for every day after the first, during which the breach continues.

shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be liable to a fine which may extend to one thousand rupees, and in the case of a conviction under clause (b), (d), (f) or (g), the Magistrate shall specify in the order the tax, fee or other amount, which the person convicted has failed or evaded to pay or has wrongfully collected, and the tax, fee or amount so specified shall be recoverable as if it were a fine.

SECTION 16

Composition of Offences

16. The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence—

(a) Where the offence consists of the failure to pay, or the evasion of, any tax recoverable under this Act, in addition to the tax so recoverable, a sum of money not exceeding one thousand rupees or double the amount of the tax recoverable, whichever is greater, and

(b) in other cases, a sum of money not exceeding one thousand rupees.

SECTION 15.

Legislative changes (1939).—The original Bill in 1939 made even the submission of an incorrect or incomplete return punishable. The Select Committee considered that unconscious omissions or mistakes should not be made punishable and consequently substituted the words “wilfully submits an untrue return.”² in Section 15.

2. Offences under the present Act are much wider than those under Section 51, Income-Tax Act, where conviction can arise only in the absence of reasonable cause. In the Sales Tax Acts in force in Bombay, Cochin, Central Provinces, West Bengal and Bihar, in place of the word “wilful” the words “without reasonable cause” are used.

Effect of the Amending Act of 1947

Sub-clauses (b) and (d).—Under the (unamended) Act, the failure or evasion to pay a tax *due under the Act* was an offence and this led to arguments in the Criminal Court that a tax is *not* due even though it had been duly assessed on the offender. A Criminal Court is obviously not the proper forum for such arguments and the amended clause brings out clearly this intention of the Legislature by making the failure or evasion to pay a tax *duly assessed* on the offender an offence. A new section (Section 16-A) has also been added ousting the jurisdiction of criminal courts in determining the validity of assessments. The opportunity was also taken to bring persons who fail or evade to pay any fee under the Act within the scope of the penal provisions.

Sub-clauses (e), (f), and (g) add new penal clauses consequential on new sections 8-A and 8-B.

The provision relating to the imposition of a penalty for continuing breaches has been omitted as unnecessary. But a new provision is made that where a person has been convicted for the failure or evasion to pay any tax, fee or other amount or for the wrongful collection of any amount, the Magistrate may specify the amount in question and recover it as if it were a fine.³

For further discussion see commentaries to clauses (b), (d), (e), (f), (g).

Summary.—

In this Act and rules, offences are punishable by (1) a Presidency Magistrate, or (2) by a First Class Magistrate with fine extending to Rs. 1,000 and the following are the offences :—

The following are the conditions for composition. (The A.C. T.O., Dy. C. T.O., C.T.O. subject to control of higher authorities, being authorities empowered to compound G.S.T.R. 29).

- (a) Wilful submission of an untrue return or failure to submit return as required by Section 9 (2) and T.R. 7, 11, 13 & 15 (dealers) and G.S.T.R. 6 (9) & 6 (10) (licensees).

Payment of a sum not exceeding Rs. 1,000.

- | | |
|--|--|
| (b) (i) Failure to pay tax assessed under this Act within the time allowed as per notice [T.R. 10, 12, 13, 15, 16 Forms A-2, B, C (Section 10).] | { Payment of tax due and either money not exceeding Rs. 1,000 or double the tax recoverable whichever is greater. |
| (ii) (New) Failure to pay fee due .. | { Payment of a sum not exceeding Rs. 1,000. |
| (c) (i) Prevention of inspection.
(ii) Prevention of entry.
(iii) Obstruction of inspection.
(iv) Obstruction of entry. | { Of an officer authorized under Section 14 in contravention of the terms thereof. Payment of a sum not exceeding Rs. 1,000. |
| (d) (i) Fraudulent evasion of payment of tax assessed under this Act. | { Payment of tax due and either a sum not exceeding Rs. 1,000 or double the amount of tax whichever is greater |
| (ii) (New) Fraudulent evasion of payment of fee due. | { Payment of a sum not exceeding Rs. 1,000. |
| (New) (e) Failure to apply for registration (under Section 8-A). | { Payment of a sum not exceeding Rs. 1,000. |
| (New) (f) Collecting tax in contravention of Section 8-B. | { Payment of a sum not exceeding Rs. 1,000. |
| (New) (g) Failure to pay amount specified in Section 8-B. | { Payment of a sum not exceeding Rs. 1,000. |
| (h) Wilful contravention of the Act.. | { Payment of a sum not exceeding Rs. 1000. |

Other offences.—Section 19 (3) makes breach of rules punishable in the same manner as in this section and those offences are also compoundable by paying a sum not exceeding Rs. 1,000.

List of other offences.—See G.S.T.R. 32.

- Failure to preserve vouchers, etc., G.S.T.R. 11.
 Failure to maintain separate accounts, G.S.T.R. 12.
 Failure to inform entry into Partnership, G.S.T.R. 19.
 Failure to report dissolution, G.S.T.R. 20.
 Failure to report discontinuance, G.S.T.R. 21.

Note that Clauses (b), (c) and (e) and latter portion of Clause (a) and G.S.T.R. 32 make breach punishable whether wilful or not.

Comments

Section 15 embodies a penal provision and it must be strictly construed (*See* Introduction).

Joinder of charges.—*See* Sections 234, 235 and 239, Cr.P.C.^{3A}.

Offence.—The term means any act or omission made punishable by any law for the time being in force.⁴ The penal provisions of this statute seem to be analogous to the provisions of Municipal enactments,^{4A} and Excise enactments⁵ and *mens rea* or criminal intent of persons is immaterial,⁶ except to the extent expressly provided in this section. [*See* Clauses (b) and (c) whose terms are very wide.] The offences are quasi-criminal only.^{6A}

(a) Wilful submission of untrue return.—Dealers and licensees must send returns. [Section 9 (2), T.R. 7, 11, 13 and 15. G.S.T.R. 6 (9), 6 (10), etc.] Returns must be true. They must be correct. If the returns are wilfully untrue an offence is committed.⁶ [For discussion of question, 'when returns are to be submitted' *see* under "Tables" "Assessment," "Licensing" and "Duties of Dealers" pages xxxv, xxxvi, xl to xliii and xlvii to I Introduction].

Wilful.—The term 'wilfully' has not been defined in this Act. The term 'wilful' is a familiar term in law and generally "it implies

3 A. Three offences of the same kind like failure to pay three consecutive instalments (S. 234, Cr.P.C.) and any number of offences committed in the course of same transaction (Section 235, Cr.P.C.) can be combined. Persons jointly concerned are triable in a single trial (Sec. 239, Cr.P.C.).

4. Section 4 (O) Cr.P.C.

4 A. *See Maxwell's Interpretation of Statutes* p. 165 (4th Edition).

5. A.I.R. 1932 All. 592.

See 1947 (2) M.L.J. 328 P.C. and English cases (1895) 1 Q.B. 918 at page 321 and 110 J.P. 317 at page 318. Unless statutes expressly or by necessary implication rule out *mens rea*, as a constituent part of the offence (as in the case of offences of a minor character) *mens rea* must also be proved.

6. *See* 1948 (1) M.L.J. 161. Criminal intent is not needed under this Act. In this case Govinda Menon, J. draws a distinction between wilfulness of neglect or wilfulness of default and wilfulness in respect of a positive act. In the view of the learned Judge, a person may not be guilty of wilful neglect or wilful default unless it can be shown either that he knows, he is committing and intends to commit a breach of his duty or that he is reckless in the sense of not caring whether his act or omission is or is not a breach of duty. On the other hand, in the case of wilfulness in regard to a positive act like the submission of return, it is not necessary to show that the person knew that his act is improper or criminal.

6 A. *See* 1948 (2) M.L.J. of 93.

nothing blamable, but merely that the person of whose action or default the expression is used, is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing and is a free agent" 7. The term 'wilfully' means deliberately or intentionally or purposely⁸ and not by accident or inadvertence. The term has no reference either to the *bona fides* of the person acting or to the motive of the person acting. It has no reference to any moral turpitude. Cases of omission due to a wrong view of the law are also wilful.⁹ It is not necessary that the person charged must know that he is doing a criminal act.⁹ Thus a dealer in silverwares who used to sell silver articles by receiving actual making charges plus an equivalent weight of silver, submitted in his return only the actual cash received. It was held that, though the dealer acted on a wrong view of the law he was nevertheless guilty of wilfully submitting an untrue return.⁹

Untrue, incorrect and incomplete return.—To constitute an offence under the first portion of clause (a) of this section, the return must be untrue. A false return is an untrue return. But it is not every incorrect or incomplete return that can be held to be an untrue return "If there are unconscious omissions or arithmetical mistakes"¹⁰ the return cannot be held to be an untrue return, much less is it a *wilful submission* of an untrue return and no offence is committed. It may be noticed here that, in the case of a mere incorrect or incomplete return—a return with unconscious omissions or mistakes, the officer is under an obligation to give an opportunity to the dealer to prove the correctness or completeness of the return.¹¹

Agent of firm sending false return is liable.¹²

Failure to submit return as required by Act and Rules.

See T.R. 7, 11, 13, 15 G.S.T.R. 6 (9) and 6 (10).

See also "Assessment" and "Licensing", "Analytical Study of the Taxation Law." Pages xxxv, xxxvi, xl to xliii, and xlvii to l. Introduction and Sections 5, 6, and 8, Commentaries.

Even sleeping partners can be proceeded against for failure to submit a return.¹³

Every failure to submit return is punishable whether or not it is wilful. The term "wilful" governs only the first part and not the

7. Per Bowen L. J. *re* Young and Harston cited in 31 ch. D. 174; cited in *Stroud's Judicial Dictionary* (p. 2242).

8. Per Russell J. in *R. v. Senior* cited in *Stroud's Judicial Dictionary* (p. 2246).

See A.I.R. 1928 P.C. 24. See also 1948 (1) M.L.J. 161.

9. See 1948 (1) M.L.J. 161.

10. A.I.R. 1942 Mad. 290. Decision under this Act. Report of the Select Committee, p. 21, *Fort St. George Gazette* Part IV, dated 25-4-39.

11. Sec. 9. See commentaries under Sec. 9.

12. A.I.R. 1941 Mad. 941. Principal given benefit of doubt.

13. Principle of 1947(2) M.L.J. 255 case under present Act.

second.¹⁴ It is no defence that accused did not know the Act and rules, since every man must be and is presumed to know the law.¹⁴ See also.¹⁵ In a prosecution for failure to submit the "A" return, *prima facie* proof of liability of assessee is sufficient to shift the burden on the assessee to show non-liability. The matter must not be viewed with the rigidity and rigour of proof required in a prosecution under the Penal Code.^{15A} Where the total turnover of a person acting as a dealer and also as a broker exceeds Rs. 10,000, he is liable to submit return, unless he is able to prove that his turnover after excluding agency transactions is less than Rs. 10,000.^{15A}

Effect of Amendment to T.R. 11

(SUBMISSION OF RETURN)

An amendment to T.R. 11 even if retrospective otherwise, cannot be so in relation to its penal character under Section 15 (a). A person cannot be held guilty under Section 15 (a) for failure to submit return which he was obliged to do only by an amendment to T.R. 11 made when the prosecution was pending.¹⁶

(b) Failure to Pay the tax assessed within the time allowed or any fee due

Such failure need not be wilful.¹⁴ When the time prescribed expires on a Sunday or a holiday payment on the next working day is valid (Sections 4 and 11, Madras General Clauses Act).

In regard to two matters, (1) tax, and (2) licence or other fee the law is changed by the Amending Act XXV of 1947.

Tax.—Assessment of Tax may be one *under the Act* or may be *ultra vires* and *outside the provisions of the Act*.

Tax 'under the Act'

In regard to assessments under the Act, before the operation of the Amending Act, failure to pay the *tax due* was an offence. Due means lawfully due^{16A}. It was, therefore, held that in criminal prosecutions, where an accused pleads non-liability, the prosecution must prove that accused is a dealer¹⁷ with taxable turnover and it was

14. A.I.R. 1942 Mad. 290. Case under present Act.

15. *Cp.* Interpreting the words "Wilful act... default or neglect..." Byles J. held that the word wilful has to be read only with act and not with default or neglect. (18 L.T. 93 Squire v. Wheeler).

15-A. See 1948(2) M.L.J. 93. When a criminal court is approached by the Revenue, Local or Public authorities for enforcement of penalty for non-payment of tax or tithe, the proceedings are not purely criminal but quasi

criminal. In fact, on *prima facie* proof being let in by the prosecution, the onus shifts, and as in a civil case the counter-petitioner (accused) is entitled to give evidence.

16. A.I.R. 1942 Mad. 736(1) Case under present Act.

16-A. Rajagopalan J., in 1948 (2) M.L.J. Sh. notes 50, 1948, M.W.N. 816

17. 1946 (2) M.L.J. 461; and

1947 (2) M.L.J. Sh. notes 12. Cases under this Act following 1937(1) M.L.J. 274 (Case under Local Boards Act.)

held to be insufficient to merely prove that assessment has become final under this Act ¹⁷. It was also held, however, that the proceedings are not *purely* criminal, and that the standard of strictness is not the same as the one under the Penal Code. ^{15A}

The rule of proof by prosecution beyond reasonable doubt, and the grant of benefit of doubt to accused, applicable to penal offences are, it was held, inapplicable to offences under this Act which are governed by the rule of *prima facie* proof ^{15A}. It was therefore held that where a person acts as a dealer and also as a broker and the *total* turnover of all transactions exceeds Rs. 10,000, the dealer is liable, unless the dealer can show that after separating the agency transactions, the turnover is less than Rs. 10,000. *Prima facie* proof being sufficient, it is not incumbent on the prosecution to prove that the turnover after separating the agency transactions exceeds Rs. 10,000. ^{15A}

The unamended provision applies not only to prosecutions pending ¹⁸ on the date of coming into force of the Amending Act, but even to prosecutions commenced after the Amending Act comes into force, provided the prosecution is in respect of assessment made before the coming into operation of the Amending Act ^{16A}

In a very recent case it has been held that in cases where the unamended provision applies, the validity of assessment can be gone into for determining whether an offence has been committed and that the accused can and will have to prove that the tax is not lawfully due. ^{16A}

The amended provision makes the intention of the Legislature clear. Under the Amended Act, the word used is "assessed". So the prosecution has only to prove the *factum* of assessment, not *liability*, and this can be done by producing a copy of the order of assessment. It must also be noticed that Section 16-A (*new*) bars entertainment of a plea questioning the validity of an assessment or a plea of non-liability where an assessment is *under* the Act. Section 15 (*b*) must be construed along with and not independently of Section 16-A. But the sections are not retrospective and they [Sec. 15 (*b*) (*new*) and Sec. 16 A (*new*)] apply only to *acts* committed after the Amending Act comes into force. ^{16A} In other words, the sections apply only to assessments made after 1-1-48.

In actual practice the position would be as follows :—Usually assessments are finalised by the close of the next financial year. So, for 1946-47, if assessments are finalised on or after 1-1-48, and if the *act* of non-payment of tax assessed is thus on or after 1-1-48, the prohibition under Sec. 16 A applies and the validity of assessment cannot be gone into in the criminal court. Similarly for Provincial assessment for 1947-48, if the *assessment* is made on or after 1-1-48 and if the *act* of non-payment is thus after 1-1-48, the *prohibition* applies. But if the assessments are finalised before 1-1-48, the prohibition in section 16-A is inapplicable and the validity of assessment can be gone into.

The net effect is that under the Amended Act, presumption in favour of the prosecution is available. No plea is entertainable questioning an assessment *under the Act*. So a plea that in an assessment of a dealer, the procedure has not been followed is not entertainable. Even if an assessment is under an *ultra vires* provision of the Act, it is nevertheless an assessment under the Act¹⁸ (See Commentaries to Sections 16-A, 17 and 18)

Recovery of Tax as fine.—(See below) under “*Recovery of tax or other amount as fine*”

Tax outside the Act

Where an assessment is outside the Act, as, for instance, when a person who is *not a dealer* is assessed, or when something which is not turnover of sale is assessed, such an assessment is not one “under the Act”, but is *ultra vires* of and outside the Act, and a plea is entertainable that the assessment is not one under the Act.¹⁹ Section 16-A is inapplicable in bar of such plea. This is the law both before and of after the Amending Act. The effect of Section 16-A, would, however, be to cast the onus of proving the *ultra vires* nature of the assessment on the accused.

Non-Payment of Fee

Before the Amending Act non-payment of licence fee was no offence. Such failure would only result in disallowance of exemption from tax. [G.S.T.R. 6 (11).] But, under the Amended Act, failure to pay *any fee* is punishable. The fee referred to is *licence fee* under Sections 5, 6, 8 or *registration fee* (Section 8-A). A registered dealer who fails to pay the fee for the year subsequent to registration or till cancellation of registration can be prosecuted.

It must, however, be noted that where the liability to pay licence or other fee is questioned, the prosecution must affirmatively prove such liability.¹⁷

Recovery of fee as fine. See below under “*Recovery of fine or other amount*”

Agent

Only a dealer is liable to pay tax. But a broker or commission agent not falling under Section 14-A is not liable, he not being a dealer. Such a broker if he does not take out a licence under Section 8 may run some risk in being called upon to pay tax. But it cannot be argued from the mere absence of licence that the broker must be considered to be a dealer. It is open to the agent or broker to establish that he was merely acting as an agent and not acting as a dealer.²⁰ If a

¹⁸ A.I.R. 1947 P.C. 78. (Case 1925 Sind 130 and 67; (I.L.R.) 1944(1) under Income-Tax Act. Cal. 34.

¹⁹ Decisions under the Income Tax Act—A.I.R. 1926 Bom. 50; A.I.R. 20. 1947 (2) M.L.J. 220. (Case under the present Act).

person's total turnover as a broker and as a dealer exceeds Rs. 10,000, he is liable to pay tax, unless the assessee is able to prove that the turnover as dealer, after separating agency transactions, is less than Rs. 10,000.^{15 A.}

Partners

Though a "firm" is a dealer, partners of the firm can be proceeded against for failure to pay tax.²¹ Even if notice is served on one of the partners, other partners can also be proceeded for failure to pay tax since service on one partner is sufficient service on all partners composing the partnership.²¹

Clause (c), Prevention or obstruction.—Prevention or obstruction of an officer authorized and acting in terms of authorization under Section 14 is punishable [See Section 14 (2) and (3)].

Officers authorized.—See Notification II.

The terms prevention and obstruction are not synonymous. In the first place prevention does not mean only an obstruction by *physical* force but by other means as well. Secondly, the distinction seems to be with reference to the stage of interference by the accused. Prevention means "to thwart, to hinder, to stop, to check or to restrain."²² While inspection or entry may be prevented at the very start, there may be obstruction during entry or inspection.

The terms intentional, voluntary or illegal obstruction have been used in Sections 184, 224, 225 and 225-B of the Penal Code and the decisions under those sections may offer some guide in interpreting the term "obstruction" in this Act.²³ The general principles deducible from the decisions may be stated here. The term obstruction is used in the Penal Code as meaning hindrance or resistance or an obstacle.²⁴

Passive conduct, evasion, objection, annoyance.—Constructive obstruction,²⁵ or passive conduct by remaining within closed doors,²⁶ or a mere withholding of assistance²⁷ may not amount to obstruction. To merely run away when an officer enters may not be obstruction.²⁸ But slamming of door in the face of an officer just when he was about to enter is obstruction.²⁹ Mere evasion is insufficient to show obstruction.³⁰ Similarly, obstruction has to be distinguished from mere objection or annoyance without using force or any threatening language. Mere objection or protest does not fall within the section.³¹

21. 1947(2) M.L.J. 255.

22. *Law Lexicon* published by M.L.J. Office.

23. It must, however, be noted that the wording of the sections are not identical. For instance, section 186, I.P.C. speaks of voluntary obstruction.

24. *Gout's Penal Law of India*. Vol. I, Page 705 (1st Edition).

25. A.I.R. 1936 Pat. 74. (under S. 186 I.P.C.)

26. 15 Mad. 221; A.I.R. 1925 Lah. 139. (Under S. 186).

27. A.I.R. 1924 Lah. 238. (Under S. 186.)

28. (Under Ss. 186 and 224). 8 I.C. 823; 32 I.C. 663.)

29. A.I.R. 1942 Mad. 552 (2).

30. 38 All. 506; 35 I.C. 973; and 1 Weir 205 (under Sec. 224 and 225-B).

31. See 2 Bom. L.R. 541; A.I.R. 1932 Rang. 21; 38 All. 506.

unless it verges on threat which is likely to be carried out immediately.³² For a case under Sea Customs Act, *see* below.³³

Threatening language.—Threats may not amount to obstruction in all cases.³⁴ The point for determination in such cases is whether the act of the accused was such as to prevent the public servant from carrying out his duties. If the acts of accused caused a public servant to abstain from proceeding with the task entrusted to him,³⁵ the offence of obstruction is made out. Where threats are combined with an attitude of an aggressive character, or where there is an exhibition of dangerous weapons by the accused, or where the threat is likely to be carried out immediately,³⁴ the offence of obstruction may be held to be made out.³⁵

Indication of force needed.—To constitute obstruction actual physical force is not necessary. If there is sufficient indication that force would be used if the officer persists in executing the work he is commissioned to do, it would be sufficient to constitute obstruction.³⁶ If it is shown that fight would ensue if officer proceeds to execute his work it would be obstruction.³⁷

Abuse.—Even the use of abusive language as a result of which sale had to be adjourned by an officer was held to be obstruction.³⁸

Physical obstruction.—Blocking gateway or deliberately placing a cycle in front of a police constable and thereby preventing him from dealing with an offender was held to be obstruction under the Penal Code³⁹. Similarly, closing a house and thus preventing a policeman from removing stolen articles found in the room and threatening to kill him was held to be obstruction.⁴⁰ Again obstruction like jostling an officer was held to be an offence.⁴¹

Person acting under public servant.—Physical obstruction to a person who acts under the direction of a public servant was held to be an offence where the public servant was also present, for the public servant in such cases must be held to be acting through his agent.⁴²

Inspection and entry.—*See* Notification II and Section 14 (2) and (3) Power is exercisable by officers of the Commercial Tax, Revenue, and Police departments. Power to inspect includes power to take copies.⁴³

32. A.I.R. 1928 Lah. 827.

33. Running away in bicycle disobeying order of Officer. No obstruction. A.I.R. 1937 Mad. 208.

34. A.I.R. 1928 Lah. 827.

35. A.I.R. 1932 Cal. 871.

A.I.R. 1933 All. 759.

A.I.R. 1938 All. 118.

36. A.I.R. 1937 Pat. 633

and A.I.R. 1943 Nag. 334. (Cases under S. 186 I.P.C.).

37. 38 All 506; 43 I.C. 832; and A.I.R. 1923 Rang. 231 cases under Sec. 225-B.

See also A.I.R. 1925 Lah. 139. (Case under Sec. 186.)

38. A.I.R. 1938 Nag. 529.

(Distinction between 184 & 186 drawn).

39. A.I.R. 1936 Nag. 86; and A.I.R. 1928 Lah. 827

40. A.I.R. 1924 Mad. 760.

41. *See* 30. I.C. 748.

42. A.I.R. 1928 Bom. 135. But *see* contra A.I.R. 1924 Lah. 233

43. *See Stroud's Judicial Dictionary* (P. 983.)

Illegal or irregular inspection or entry—right of private defence—

Suppose there is irregularity in inspection or entry (officer not being one specified in the Notification or time of inspection not being reasonable business hours or inspection sought being in respect of private accounts), and force is sued by accused and the officer acting under this Act is unjured, does it amount to an offence? ⁴⁴

Under Section 99, I.P.C., the acts of a public servant acting with jurisdiction in good faith and under colour of office but in erroneous exercise thereof, is protected and there is no right of private defence as against such acts. Thus if there is mere *irregularity* in the act of the public servant, or if the authority of the public servant is *defective* in minor particulars, or if the officer exceeds his duty in minor particulars, ⁴⁵ or if the public servant is acting in good faith and in the honest belief that he is entitled to so act ⁴⁶ no right of private defence is available.

In view of Section 16-A which operates in regard to prosecutions after 1-1-1948 ¹⁶ non-liability to pay tax, fee or other sum or the invalidity of such levy cannot be pleaded in the Criminal Court, provided such levy is under the Act. ^{16A} (See commentaries to Sections 16-A and 17). Even a levy under an *ultra vires* provision of the Act is one under the act ¹⁸.

But Section 99 is wholly *inapplicable* to an act of public servant done *without jurisdiction* ⁴⁷ or an act which is *ultra vires* ⁴⁸ or an act of a public servant done without good faith. ⁴⁹ The general principle of law is that the terms of a penal Act should not be understood as applying to acts generally excusable or justifiable in law. ⁵⁰ Thus, the right of private defence of person and property is open if the authority of the public servant is wholly defective or if there is no authority at all, or if the officer acts widely outside his duties ⁵¹ or where the warrant of authority is illegal. ⁵² On this principle, where the entry of a public servant was illegal, right of private defence was held available. ⁵³

Clause (d), Fraudulently evades payment of tax.—The term 'fraudulently' has been defined in the Indian Penal Code. "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". ⁵⁴ The term defraud means wrongfully

44. See Sec. 99 (I.P.C.)

45. A.I.R. 1932 Pat. 315;

46. A.I.R. 1927 Lah. 851.

A.I.R. 1937 M.W.N. 741.

47. A.I.R. 1927 Bom. 483;

A.I.R. 1924 Cal. 959;

A.I.R. 1921 Pat. 415.

A.I.R. 1926 Lah. 19;

48. 20 I.C. 992;

A.I.R. 1941 Sind. 82.

49. A.I.R. 1944 Pat. 222.

50. Maxwell's *Interpretation of Statutes* 3rd Edition p. 145.

51. A.I.R. 1932 Pat. 315; 20 I.C. 233.

52. A.I.R. 1934 Mad. 664 (2);

53. A.I.R. 1926 Lah. 326 (Case under S. 99, I.P.C. with reference to act of Income-tax Officer) See also A.I.R. 1932 Pat. 66 (Case of illegal search)

54. Sec. 25 I.P.C.

withholding from another what is due to him. Wrongful withholding of tax due to the Government is a fraudulent act. The term "evasion" connotes the existence of some "artifice" or a "trick or subterfuge," or device or stratagem on the part of the person evading payment of tax. The term 'evade' is used in penal statutes in a sense which suggests 'underhand dealing'.⁵⁵

Some of the decisions under the Penal Code⁵⁶ may offer some guidance in determining when a person acts fraudulently. An intention to defraud which is the very essence of a fraudulent act implies something more than mere deceit.

There is a distinction between a dishonest and a fraudulent act. If the intention is to cause wrongful loss the act is dishonest.⁵⁷ Deceit, *intention to deceive* and, in some cases, the existence of some kind of secrecy have been held to the elements of a fraudulent act under Section 206, I.P.C. In the absence of these elements the act is not fraudulent.⁵⁸ An act done merely to hide one's neglect of duty is not a fraudulent act.⁵⁹

Mere non-payment of tax is made punishable under clause (b). But, to justify conviction under this clause (d), there must be some further circumstance showing that the assessee evades payment of tax and that too fraudulently.

As in the case of clause (b) two changes are introduced by the amended section. Before the 1st January, 1948 even in an assessment under the Act in case of denial, prosecution must prove liability. But after the 1st January no such obligation attaches. Only the factum of assessment must be proved. Secondly, before the 1st January non-payment of licence or other fee was not punishable. But after the 1st January such non-payment is punishable. [See fuller commentaries to clause (b).] Operation of the amendment is not retrospective¹⁶ and ^{16A}.

(e) *(New) Failure to submit application for registration.*— Provision for registration mandatorily applies only to dealers with turnover of not less than Rs. 7,500. Such mandatorily registrable dealers can be prosecuted for failure to apply for registration. Petty dealers with turnover of less than Rs. 7,500 are not obliged to register themselves though they may do so. Such petty and optionally registrable dealers cannot be prosecuted for failure to apply for registration. [See T.R. 5-A (1).] Till 1st February 1948, the time allowed under T.R. 5-A (1) no prosecution lies. Failure to apply for registration within a month of reaching the turnover of Rs. 7,500 entails prosecution.

55. *Stroud's Judicial Dictionary*, page 649.

56. See Ss. 25, 206, 210, 415 to 417. Ss. 421 to 424, 463 and 465, 471, 477-A etc. (I.P.C.)

57. A.I.R. 1938 Pat. 165.

See Sec. 24, I.P.C.D., definition of 'dishonestly'.

58. A.I.R. 1937 Mad. 713. See also A.I.R. 1940 Mad. 271.

59. A.I.R. 1935 Rang 203.

Note that such failure need not be wilful.¹⁴

(f) (New) **Collects tax in contravention of Section 8-B.**—Collection of tax by a person *not entitled* to collect (dealer being unregistered) and collection of tax by a person entitled to collect (dealer being registered), but *in contravention* of the conditions and restrictions imposed [e.g., collecting taxes at rates higher than those specified in Section 5, or notification under Section 6 and thus contravening T. R. 5 A (7)] are hit by this sub-section.

If any person *desires* to collect tax from his customers, he *must register* himself however low his turnover may be (Section 8-B). So though a person with turnover of less than Rs. 7,500, is *not obliged* to register himself (Section 8-A), if he intends to collect tax from his customers he must *register* himself. All *unregistered* dealers collecting tax and all *registered* dealers collecting tax in contravention of the conditions imposed are liable to be prosecuted.

There is no need to prove wilfulness in a prosecution under this sub-section.¹⁴

If the order passed by an assessing authority that collection is made contrary to Section 8 (B) is *under the Act* [See T.R. 5-A (9)] such an order is not questionable in the Criminal Court (Section 16-A).

Recovery of the amount as fine.—See below.

(g) (New) **Failure to pay amounts specified.**—Such failure may arise with reference to all classes of dealers, *viz.*, dealers with taxable turnover (Rs. 10,000 and over) dealers with non-taxable, but with registrable turnover (Rs. 7,500 and over but less than Rs. 10,000), dealers with less than registrable turnover (less than Rs. 7,500) and dealers registered or unregistered. The principle of Section 8-B and T. R. 5-A (7) is that the entire sales tax collected from customers by dealers must be paid to Government. A contravention of this principle is punishable. The payment by the dealer has to be made before the 30th April of the year subsequent to the year of collection of tax. (See Section 8-B.) For 1947-48, the payment must be made on or before 30th April 1948. On failure prosecution lies. Similarly a notice may issue in Form B-2 prescribing a period of 21 days within which the *excess* of amount collected by dealer but withheld from the Government has to be paid. On failure also prosecution lies.

In view of Section 16-A, provided the order of the taxing or other authority is under the Act, no plea is entertainable in the Criminal Court that the order is invalid or that there is no liability to pay the sum.

There is no need to prove wilfulness.¹⁴

Amendment prospective :

The clause operates prospectively^{16A}.

Clause (h) wilfully acts in contravention of this Act. See commentaries to clause (a) for meaning of term 'wilful'. It is not clear

whether the term 'act' in this section includes illegal omission.⁶⁰ But it is a cardinal principle of criminal law that acts and illegal omissions stand very much on the same footing.⁶¹ It is however well settled that if inaction or omission is not illegal it is not punishable.⁶² Similarly, gross negligence is not an illegal omission and does not amount to an offence.⁶³ Wilful failure to take out licence is not punishable.

Other Offences.

For other offences, see G.S.T.R. 32, Wilfulness is not mentioned as an element in offences under G.S.T.R. 32

When offence is no offence.—It is unreasonable to infer an intention to repeal the general principles of law relating to exceptions embodied in the Penal Code. So, if acts which are otherwise offences e.g., obstruction, etc., are committed by persons or under circumstances falling under Chapter IV of the Penal Code, they are not offences.⁶⁴

Presidency Magistrate or Magistrate of first class. In the hierarchy of criminal courts they have equal powers.⁶⁵ Local limits of the jurisdiction of Presidency Magistrates are set out in Sec. 20, Cr. P. C., while the first class Magistrate can exercise jurisdiction over areas as defined by the Local Government.⁶⁶

Initiation and Procedure in prosecution. The person who is to initiate prosecution is not mentioned in the section and there is no provision analogous to Section 53 of the Income-Tax Act.

But private persons cannot initiate prosecution.⁶⁷ All assessing and licensing authorities can initiate prosecution.^{67A}

Under Section 5 (2), Cr. P. C., the procedure in prosecution under this Act is the one prescribed in the Code of Criminal Procedure. Since the offence under Section 15 is punishable only with fine, the procedure is the one prescribed for summons cases in the Code of Criminal Procedure.⁶⁸

Place of inquiry.—(See Section 177, Cr. P.C.)—An offence is triable in the Court within whose jurisdiction it is committed. Offences under

60. See Sec. 32, I.P.C. & Sec. 1(2), Cr. P.C.—where act has been defined as including illegal omissions.

Act including omission at act (95 I.C. 603).

61. A.I.R. 1939 F.C. 43 at p. 55 Varadachariar J.

62. A.I.R. 1934 Lah. 813 Case under S. 32, Penal Code.

63. A.I.R. 1925 Sind 233.

64. Maxwell's *Interpretation of Statutes* p. 148. See 1915, M.W.N. 43.

65. Sec. 32 Cr. P. C.

66. Sec. 12 Cr. P. C.

67. See A.I.R. 1929 Mad. 604. Case under Abkari Act.

67A. The Sales Tax Acts in Bihar West Bengal, Bombay, Central Provinces and Cochin provide that complaint of an offence under the Act is not cognizable in Courts except on the sanction of the Commissioner of Sales Tax.

68. See Secs. 241 to 250 Cr. P. C. The special features of summons case procedure are those :

(1) Accused is brought and substance of accusation is stated.

(2) If accused admits he is convicted.

(3) If he does not admit, complainant is examined as also prosecution witness and evidence on behalf of accused is then taken.

(4) After evidence, accused is either convicted or acquitted.

(a), (b), (d), (e), and (g) are triable by courts within whose jurisdiction the offices of taxing, or other officers to whom tax or other amount is to be paid as per notice, or returns are to be submitted as per Act and rules or registration is to be applied for, are situate. Similarly the Court having jurisdiction over the place where offence under clauses (c) and (f) is committed, can try the offender. Offences under G.S.T.R. 11 read with G.S.T.R. 32 and G.S.T.R. 12 read with G.S.T.R. 32 are triable by the Magistrate within whose jurisdiction the office of the assessing authority to whom the dealer has to report is situate.

But a charge for false verification of a return is triable by the Court within whose jurisdiction the place where the verification took place is situate.

Sworn Statement.—An officer making a complaint need not be examined on oath before complaint is taken on file (*See* Section 200 (a) Cr. P.C.)

Fine.—The Magistrate cannot impose imprisonment. Only a sentence of fine can be passed.

Continuing breach and Subsequent breach.—(Before 1-1-1948)—Continuance of same offence is distinguishable from the commission of a fresh offence. The imposition of prospective fines in anticipation is illegal.⁶⁹ Thus a sentence that accused will pay fine for every day of default after the date fixed for payment of tax is illegal and must be set aside. For the offence of continuing breach, a second prosecution and conviction is necessary.⁷⁰ The accused must be given a fresh opportunity to defend himself. For every day of breach after the first breach, the accused person can be convicted and sentenced to pay a fine of Rs. 50. Questions of this character are inapplicable under the present amended law.

Recovery of fine.—Section 64, I. P. C., which enables a Magistrate to award imprisonment in default of payment of fine has been extended to offences under special and local laws by reason of Section 40, I.P.C.⁷¹ The Madras General Sales Tax Act is a local law⁷² and in respect of fine imposed under Section 15 of this Act imprisonment can be awarded in default.

Further, by reason of Section 19 of the Madras General Clauses Act the provisions of Sections 63, 68, 69, 70, I.P.C. apply to all fines imposed under the authority of the General Sales Tax Act,

69. A.I.R. 1943 Mad. 128 Case under present Act.

See following Cases under Municipal and other similar Acts:
16 Mad. 230. A.I.R. 1934 Lah. 447.
27 Cal. 565. A.I.R. 1935 All. 986.
37 Cal. 671. A.I.R. 1937 Lah. 155.

A.I.R. 1932 Nag. 116.

A.I.R. 1935 Pat. 208.

A.I.R. 1933 All. 657.

70. A.I.R. 1935 Mad 56;

A.I.R. 1929 Sind. 52(1).

71. *See* 18 Mad.

72. Sec. 42 I.P.C.

as well.⁷³ Section 386, Cr. P. C., provides for the issue of warrants for the recovery of fines. But it is not clear whether the said section applies to fines under this Act since Section 19 of the Madras General Clauses Act does not attract the provisions of Cr.P.C. in this respect.⁷⁴

Recovery of Tax or other Amount as Fine

Before the amendment of 1947 there was no provision for recovery of tax as fine on conviction.^{74A} The amended section provides for recovery of (i) tax assessed [(b) and (d)], (ii) fee due [Cl. (b) and (d)], and (iii) amounts collected in contravention of Section 8-B [Cl. (f) and (g)] and the Magistrate is obliged to direct recovery of tax or fee or other amount.

In view of Section 16-A, the validity of or liability of dealer to pay the amount assessed or levied cannot be gone into in the Criminal Court, provided the authority acts *under the Act* (See Section 16-A).

If in a prosecution there is no evidence as to the amount of tax or fee the Magistrate can decline to direct such collection as fine⁷⁵.

The amendment is inapplicable to pending prosecutions⁷⁶.

Applicability of provisions of Penal Code.—The question may arise whether, in view of Section 15, the provisions of the Penal Code would also apply. The general principle of law is that the Penal Code would apply if acts fall within the statute though there may be specific offences and penalties in the special Act⁷⁶. But, if an act is an offence under both the general and the special law, a person cannot be convicted under both the enactments but only under one of them and preferably under the latter enactment⁷⁶. If the Magistrate proceeds under the Penal Code it is better to drop the charge under the local Act⁷⁷. It seems that, since officers appointed under this Act are public servants under Section 21 (Clauses 9 and 10) I.P.C. the provisions of Chapters IX and X. I.P.C. relating to "offences by or relating to Public Servants" and "contempts of lawful authority of Public Servants" would apply⁷⁸.

73. Sec. 68 provides that imprisonment should terminate on payment of fine.

Sec. 69 provides for termination of imprisonment upon payment of proportionate part of fines.

Sec. 70 provides that fine is leviable within 6 years or during imprisonment.

74. See Sec. 224, Madras Local Boards Act, which expressly makes fine recoverable under the provisions of Cr. P. C.

74A. Need for provision in the Act for collecting tax by magistracy was suggested by the present writer in communications to Government,

75. 1933 M.W.N. 1114.

76. Sec. 5, Penal Code. 6 Mad. 249; 6 L. W. 283. Offence under I.P.C. and Pro. Ins. Act.

52 Mad. 79 (offence under Local Boards Act and I.P.C.) A.I.R. 1932. All. 69 conviction under I.P.C. though facts fall within Motor Vehicles Act also.

A.I.R. 1932. All. 18. Abetment of offence under Salt Act. Contra 22 Cal. 131 at p. 139.

77. A.I.R. 1936 Mad. 102 (Municipal Act and Penal Code).

78. Secs. 161 to 171 and 172 to 190 (I.P.C.). A.I.R. 1933 Rang. 292. (Income-Tax Act case).

Thus *regarding service of summons*, absconding to avoid summons (Sec. 172), prevention of service of summons (Sec. 173), non-attendance pursuant to summons (Section 174), and non-production of document pursuant to such, summons (Section 175), are offences. Omission to give information or giving false information (Sections 176 and 177) asked for under Section 14 or giving false statements (Sections 181 and 182) are offences. Refusing to be bound by oath, or to answer questions or to sign statements are offences (Sec. 178 to 180). Equally omission to assist officer, obstructing and disobeying an order of officer are also offences. (Sections 186—188.)

In such criminal prosecutions, by reason of Section 16 A, which applies to proceedings in criminal courts taken after the Amending Act, the validity of assessment, etc., or liability or otherwise of dealers to pay tax, fee or other amount cannot be gone into by the Criminal Court *if the action is under the Act* (See Sections 16-A, 17 & 18).

Proceedings under Sections 476 and 195, Cr.P.C.—The authorities under this Act can examine persons even on oath and exercise powers to secure their attendance. The Revisional and Appellate authorities can exercise the same powers (G.S.T.R. 24, 25 and 27). So the authorities satisfy the tests laid down for courts, and they are entitled to give a final decision on the matter before them⁷⁹. At least when they take evidence the authorities seem to be clothed with the powers of Court. Are the provisions relating to offences against public justice (Chapter XI, Penal Code) applicable? The answer is in the affirmative⁸⁰. The Calcutta High Court, construing the Income-Tax Act, has taken a strict view and held that the provisions of Chapter XI, Penal Code, do not apply unless made applicable specifically⁸¹.

In proceedings under Sections 476 and 195, Criminal Procedure Code, and prosecutions initiated after 1-1-1948 in criminal courts, in view of Section 16-A, a plea challenging assessment or levy of tax, fine or other amount as illegal, is not sustainable if such order is under the Act (See Section 16-A and Sections 17 and 18, Commentaries).

Summary and Regular Trial, Appeal and Revision.

Features of Summary Trial.—In trying a case summarily a Magistrate (First Class Magistrate or Presidency Magistrate) need not record the evidence of witnesses or frame a formal charge [Section 263 and 362 (4), Cr.P.C.].

79. A.I.R. 1935 Mad. 673.

80. In 36 Mad. 72. 38 Bom. 145 and A.I.R. 1930 Ran. 201. Income Tax Officer, Divisional Officers, etc. held Courts and Sec. 476, Cr. P. C. applied.

A.I.R. 1937 Lah. 876. Assistant Commissioner held Court-granting of copies.

But see following case also.

No *res judicata* regarding Income-Tax Assessments. A.I.R. 1936 Mad. 148 at page 151 and A.I.R. 1930 Mad. 209.

In A. I. B. 1937 Lah. 721 held Assessment Proceedings not judicial. Positive evidence for I.T.O. to prove not needed.

81. A.I.R. 1927 Cal. 724.

In the *mofussil* the record shall contain entries in a form as prescribed in Section, 263 Cr.P.C. and a brief statement of the reasons for finding is required only if accused is convicted. No reasons are needed if finding is one of acquittal. In case of conviction, only if the sentence is appealable is a judgment to be recorded embodying the substance of the evidence besides the particulars mentioned in Sections 263 (264, Cr.P.C.).

In the case of a Presidency Magistrate where fine not exceeding Rs. 200 is imposed, no reasons need be recorded. But the judgment must set out the particulars in Section 370, Cr. P.C. ⁸².

Appeal and Revision in Summary Trial.—In the *mofussil* the offences under this section are triable by first class Magistrates and Bench of Magistrates specially empowered with first class powers in a summary way in “their discretion” (Section 260 (a), Cr.P.C.). Trial of the case in a summary way being a matter of discretion, where there is likely to be much evidence and where there is hot contest, trial under regular procedure is preferable.

If trial is summary, and if the Magistrate passes a sentence of fine not exceeding Rs. 200, no appeal lies (Section 414, Cr.P.C.). But revision lies to the High Court (Section 439, Cr.P.C.). Against an acquittal in such summary trial, appeal may be preferred to the High Court by the Provincial Government (Sec. 417, Cr.P.C.). ⁸³.

If in such a summary trial appealable sentence (fine exceeding Rs. 200) is passed, appeal lies to the Sessions Court (Sec. 408, Cr.P.C.).

In the *City of Madras*, offences under this section may be tried summarily or under regular procedure. Presidency Magistrates try cases in a summary way where no appeal lies, *viz.*, where fine to be awarded does not exceed Rs. 200 (*See* Section 362 (1) and (4), Cr.P.C.). Where an appeal lies (*e.g.*, fine exceeding Rs. 200 is to be awarded) trial before the Presidency Magistrate must be in the regular way. Where a non-appealable sentence is passed by a Presidency Magistrate, revision lies to the High Court (Sec. 439, Cr.P.C.).

Features of Regular Trial.—Recording of evidence, framing of charge, and conforming to Section 367, Cr.P.C., in regard to judgment are some of the features. Thus a judgment by a first class Magistrate trying a case in the regular way must contain the points for determination and reasons for the conclusion. (*See* 367, Cr.P.C.). But a judgment of the Presidency Magistrate even in a regular trial must conform to the Form in Section 370, Cr.P.C. and if fine exceeding Rs. 200 is passed, a brief statement of the reasons must also be given (Section 370, Cr.P.C.).

Appeal and Revision in Regular Trial.—In the case of a trial by the first class Magistrate in the ordinary way, an appeal lies to the Sessions Court if fine imposed exceeds Rs. 50⁸⁴. As already stated a sentence of

82. A.I.R. 1933 Cal. 732.

84. *See* 413 Cr. P.C.

83. A.I.R. 1934 All. 842.

fine exceeding Rs. 200 can be passed by a Presidency Magistrate only in a regular trial, and such sentence is appealable to the High Court⁸⁵. Though the revisional powers of the High Court are wide, in cases where an appeal lies but is not preferred, no revision lies⁸⁶. But where a First Class Magistrate or even a Presidency Magistrate passes a non-appealable sentence of fine (*viz.*, fine not exceeding Rs. 50 and 200 respectively), revision to the High Court for reversing the sentence is sustainable⁸⁷. The District Magistrate and Sessions Judge are also vested with powers of revision. But they can only report to the High Court to secure a reversal of sentence⁸⁸. Against a dismissal of a complaint under Section 203 or 204 (3), Cr.P.C., revision lies to the District Magistrate or Sessions Judge⁸⁹. Against an acquittal the Provincial Government may prefer an appeal to the High Court⁹⁰.

SECTION 16

Prescribed Authority

The A.C.T.O's, Dy. C.T.O's and C.T.O's are the compounding authorities. The Deputy Commissioner and the Board of Revenue are the controlling authorities. [G.S.T.R. 29.]

Committed or reasonably suspected.—Composition need not necessarily be with one who has committed an offence but any person who is reasonably suspected to have committed an offence can compound the offence of which he is charged.

Effect of Composition.—Composition differs from withdrawal. The latter is the act of one party, the complainant, while the former is the result of an arrangement between both the parties—the complainant and the accused. A Magistrate cannot decline to recognise composition and proceed with trial¹. The effect of compounding or composing an offence under Section 15 is the acquittal of the accused² and the Magistrate cannot convict the accused. The Magistrate has only to record a judgment of acquittal.

When an offence can be compounded.—Since an offence falling under Section 15 is complete when the acts constituting it are complete, and since the offence can be compounded without the permission of the court, composition can be effected even before the case comes before court or before a prosecution is instituted.³ A case can be compounded at any time before judgment is pronounced.⁴ In the appellate court, when an appeal is pending against conviction, no composition can be effected without the leave of the court and before

85. See 411 Cr. P. C.

86. See 439 (5) Cr. P. C.

87. See 439 Cr. P. C.

88. See 438 Cr. P. C.

89. Sec. 436 Cr. P. C.

90. Sec. 417 Cr. P. C.

1. A.I.R. 1931 Lah. 402 (1). See also 10 Pat. L.T. 840.

2. 45 All. 145. See also Sec. 345 (6) Cr. P.C.

3. 41 Mad. 685.

See A.I.R. 1937 Mad. 825, case relating to non-compoundable offence.

4. 45 Cal. 816.

the appeal is heard.⁵ Similarly, composition in the High Court as a court of revision is dependent on the permission of the High Court.⁶

Form of composition.—No particular form is needed to compose an offence. Even a letter intimating withdrawal of complaint was construed in the undermentioned case as a composition of offence.⁷

Proof of composition.—When the fact of composition is denied, the Magistrate must record evidence in proof of composition. The burden of proof is on the accused.⁸

Suit for damages.—The effect of composition would be also to bar a civil suit for damages on the facts constituting the offence.⁹

Amount for composition.—The amount to be received by the prescribed authority is to be according to the discretion of the authority subject to the limits set out in the section.

But under threat of prosecution an unreasonably large sum of money ought not to be extorted.¹⁰

SECTION 16-A

ASSESSMENTS, ETC., NOT TO BE QUESTIONED IN PROSECUTIONS

[NEW]

16-A. The validity of the assessment of any tax, or of the levy of any fee or other amount, made under this Act, or the liability of any person to pay any tax, fee or other amount so assessed or levied shall not be questioned in any Criminal Court in any prosecution or other proceeding, whether under this Act or otherwise.

Effect of the New Provision

As seen in Commentaries to Section 15, Clauses (b) and (d) [old] it was ruled that in proceedings in criminal courts, prosecution must prove the liability of accused to pay tax¹ and not rely on the mere fact of assessment, even though the assessment is under the Act. The Department found it difficult to prove all links in the chain needed to sustain an assessment in a criminal court which starts with a presumption in favour of the accused. There was also need to avoid conflicting decisions of parallel courts, criminal and civil, in respect of the same question. It was therefore decided to oust the jurisdiction

5. 345 (5), Cr.P.C.

6. Sec. 345 (5A), Cr.P.C.

7. 45 All. 145.

A.I.R. 1932 All. 474.

8. 39 Mad. 946. 41 Mad. 685.

A.I.R. 1932 Sind 7.

9. A.I.R. 1933 Bom. 413.

10. (1929) 4. I.T.C. 97.

1. See 1946 (2) M. L. J. 461 and 1947 (2) M.L.J. Sh. notes 12. See also 948 (2) M.L.J. 93.

of criminal courts while retaining the jurisdiction of civil courts.² So the decision in 1946 (2) M.L.J. 461 is no longer good law in regard to prosecutions initiated from 1-1-1948.

Prosecutions commenced prior to and even pending on 1-1-1948 and prosecutions commenced after 1-1-1948 in respect of assessments before 1-1-1948 are, however, governed by the decision in 1946 (2) M.L.J. 461, and 1948 (2) M.L.J. 93, the amendment not being retrospective.³

Analysis of the section—

I. The following are hit by the section :—

Taxes (ordinary tax at three pies per rupee; other taxes at lower rates and luxury tax under Sections 3 and 5.
Fee payable under Sections 5, 6 & 8.
Amount payable under Section 8-B.

II. The *validity* of the tax, fee or amount payable, and the *liability* to pay cannot be challenged if conditions III and IV below exist.

III. Such challenge is barred in prosecutions or other proceedings in criminal courts.

IV. The bar is available only if action of the authority is *under the Act*.

Validity—Liability.—Provided the action taken by the authorities is *under the Act* no challenge is entertainable in the criminal court of the validity of the act or the justifiability of the act of assessment or levy or of the liability of the dealer in relation thereto. Thus a plea that the procedure prescribed under the Act was not followed, or that the conclusion reached by the authority acting under the Act is erroneous⁴ or that action taken by the authority is under an *ultra vires* provision of the Act⁵ would be no defence in a criminal court.

This provision applies only to prosecutions instituted after the Amending Act came into force in which assessment made after 1-1-48 is in question. But the plea mentioned above would be available to prosecutions instituted before the Amending Act.

In construing this section in relation to Sec. 15 (b) it must be noticed that both the sections come into operation only on 1-1-48. The sections have no retrospective operation. So in respect of

2. Finance Minister's Speech on 1-12-1947.

The original proposal of the Government to oust the jurisdiction of civil courts also was dropped.

3. See A. I. R. 1942 Mad 736 (1) amendment cannot effect pending prosecution. See also Judgment of Rajagopalan J, reported in "*The Hindu*" on 4-10-1948.

4. See following cases under Income-tax Act :—

A.I.R. 1940 P.C. 105.

A.I.R. 1937 Lah. 721.

A.I.R. 1925 Sind. 130.

A.I.R. 1937 Mad. 241.

42 Cal. 151.

1940 (1) M.L.J. 704. Under Revenue Recovery Act.

See commentaries to Ss. 17 & 18.

5. A.I.R. 1947 P.C. 78. Income-tax levied under *ultra vires* provision nevertheless under Act.

prosecution under Sec. 15 (b) after the coming into force of the Amending Act if the assessment and consequent failure to pay the tax assessed is one before the Amending Act came into force, the prohibition mentioned in this section is inapplicable, and the question of validity of assessment can be gone into in the criminal court.⁵

Both before and after the Amending Act a challenge of the assessing authority's act *outside the Act* is entertainable in the criminal court. So if the action taken is *ultra vires* and is *outside* the purview of the Act, the matter is open to challenge even in a criminal court both in regard to validity and liability as well. This is the law both before and after 1-1-1948. For instance, if an officer taxes something that is not taxable, the assessment is not one under the Act.⁶ *Under the Act* meaning of—See Section 17 & 18, Commentaries.

Liability so assessed.—The prohibition against challenge of liability attaches only to action of officers *under the Act*. This is made clear by the use of the word “so” which relates back, and takes in the preceding words “under the Act”.

Criminal Court otherwise.—In all proceedings in criminal courts the prohibition applies. For instance, (1) in prosecutions under the Act, *e.g.* Section 15 (ii), in other proceedings under the Act in criminal courts for recovery of tax fee or other amount on conviction as fine [See Section 15 (iii)] and in proceedings under the Penal Code (Chapter IX, X, XI) (See Section 15, Commentaries), the validity or the liability determined by tax authorities under the Act is not open to challenge.

Civil Courts.—Section 16-A does not cover Civil Courts. See Sections 17 and 18.

SECTIONS 17 & 18.

ACTIONS IN COURTS AND LIMITATION ¹

GENERAL NOTE.

These sections relate to actions against the Government (Crown) and against officers acting under this Act. ²

BAR OF CERTAIN PROCEEDINGS

17. (1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Provincial Government, for any act done or purporting to be done under this Act, without the previous sanction of the Provincial Government.

⁵ A. Rajagopalan, J. in 1948 (2), M.L.J. short notes 50=1948 M.W.N. 816.

⁶ A.I.R. 1926 Bom. 50.

A.I.R. 1925 Sind. 130.

A.I.R. 1932 Sind. 48.

(I.L.R.) 1944 (1) Cal. 34.

¹ Title is inserted for convenience. It does not find a place in the Act.

² Cp. Sec. 270, Government of India Act 1935.

See also Sec. 197, Cr.P.C. Sec. 67, Income Tax Act, Sec. 227(a), Madras Local Boards Act.

(2) No officer or servant of the Provincial Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties of the discharge of functions imposed by or under this Act.

SECTION 18.

LIMITATION FOR CERTAIN SUITS AND PROSECUTION

18. No suit shall be instituted against the Crown and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the Provincial Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

Summary.—Actions are of two kinds : (1) Suit against the Crown and (2) actions against officers or servants of the Provincial Government. A suit against the Crown for any act done purporting to be done under the Act, has to be instituted within a period of six months from the date of the act complained of. For action against the Crown, for acts neither done nor purporting to be done under the Act, the ordinary law of limitation applies. Actions against officers and servants fall into two categories, *viz.*, (a) actions for anything done or purporting to be done under this Act, and (b) actions for anything which neither is done, nor purports to be done under this Act. So far as the latter kind of action is concerned, it is not covered by the bar under Section 17 of this Act nor by the Rule of Limitation set out in Section 18 and the ordinary Rule of Limitation applies. But the former kind of action is subject to certain conditions. Firstly, the previous sanction of the Provincial Government is required. Secondly, the proceeding must be instituted within six months from the date of the act complained of. So far as liability is concerned, in the case of all actions, the officer or servant is not liable, if the act is done in good faith, in the course of the execution of duties or in the discharge of functions imposed by or under this Act.

Object of Section 17 and its construction.—The object of Section 17 is to protect the act of a person which may not be legal but is nevertheless one purported to be done under the Act. If a person *bona fide* believes he is acting under a statute, he is entitled to protection, provided he does not absurdly believe so ³. When a person acts

well within a statute he is not liable in any court of law and no protection is needed. But, when he purports to act under a statute, protection is needed so as to give him some latitude in his acts in the discharge of the statutory duties imposed on him ⁴. Since the initiation of both criminal and civil proceedings is affected, "the Legislature must be presumed to have been very cautious in depriving the aggrieved citizens of redress in a court of law, and restrictions on such a remedy imposed in the interest of the public servant should not be extended so as to unduly restrict the remedy of the citizen."⁴

Suit prosecution or other proceeding.—The words used are very comprehensive and include all proceedings in a civil or criminal court.

Some of the conceivable actions can be stated here :

1. Special proceedings in the High Court.
 - (a) *Writs of certiorari* to quash proceedings pending before the authorities in this Act.
 - (b) *Writs of mandamus*—directing officers to do their duties.
2. Revisional proceedings in the High Court.
3. Other Civil proceedings.
 - (a) Suit contesting validity of tax or fee levied and recovery of tax or fee.
 - (b) Suits relating to licences, like refusal to grant licence, etc.
 - (c) Injunction suits restraining officers from proceeding with the levy of tax or collection of tax, etc., or suits for injunction restraining prosecution.
 - (d) Actions in torts for any act done by officers or servants illegally or maliciously, including a suit for damages for malicious prosecution.
4. Criminal proceedings against officers and servants.

How far are these actions barred by the present Act ? See below :

Actions against Crown.—No suit lies against the Crown in respect of the discharge of governmental functions covered by the statute, e.g., collection of tax. For improper acts of Crown servants, the question of suit can arise only if the acts are done under the express orders of, or are ratified or adopted by the Government.⁵ (See below under each heading, of the classes of suits)

Section 18 cannot be construed as totally prohibiting a suit against the Crown. The marginal heading shows that its object is to set out a rule of limitation. Further, the right of suit against the Provincial Government expressly preserved in Section 176, Government of India Act (1935), cannot be abrogated by any act of the Provincial

4. A.I.R. 1939 F.C. 43 Case under Sec. 270, Government of India Act.

5. A.I.R. 1942 Mad. 539 and A.I.R. 1944 F.C. 41.

Legislature⁶ (Section 108, Government of India Act, 1935). The reason is this: The tradition of British Jurisprudence is to place the Crown also within the Law. "No member of the executive can interfere, with the liberty of or property of British subject except on condition that he can support the legality of his action before a court of justice." As between the Crown and its subjects there cannot be any such thing as an act of State.⁷ For instances of suit against Secretary of State see below:⁸

Procedure in suit against Crown.—Under Section 79, C.P.C., when the Provincial Government is sued as representing the Crown, the Government must be sued as the 'province.' Under Section 80, C.P. Code, a notice *must* be sent to the Secretary to the Provincial Government or the Collector of the District, and no suit can be brought until the expiration of two months next after the notice is served.⁹ The notice must state the "cause of action, the name, description and place of residence of the plaintiff and the relief which he (plaintiff) claims."

Proceedings in the High Court.—At present, proceedings in the nature of a *writ of certiorari* and original actions are barred by reason of Section 226 of the Government of India Act (1935).¹⁰ But to ask a Revenue Officer or the Board of Revenue to do the statutory duty vested by law is not a matter concerning revenue, and a *writ of Mandamus* (under Section 45 of the Specific Relief Act) is sustainable in the High Court.¹¹ Similarly *writ of Mandamus* can issue directing an officer to forbear from doing a thing which he has no jurisdiction to do.¹² But *Mandamus* cannot issue directing an officer to refund tax collected for, even in appearance the court cannot seem to command

6. 40 Cal. 391 P.C. Prohibition of right of suit *ultra vires* View in A.I.R. 1929 Rang.70 (Case under Income-Tax Act) that Crown cannot be sued is incorrect.

7. A.I.R. 1931 P.C. 248.

8. 28 Mad. 213. Post Office Act. Suit for V.P. Money not paid to consignee (See under heading Recovery of Tax, Torts, etc.)

9. 37 Mad. 113. In all suits against the Government, even when the act is totally illegal, notice is obligatory See also A.I.R. 1927 P.C. 176.

10. Cases under Income-Tax Act.

A.I.R. 1936 Mad. 398.

A.I.R. 1943 Bom. 78.

Other Acts.

A.I.R. 1940 Bom. 65 and 294 and A.I.R. 1939 Cal. 763.

Original actions in High Court.

Cases under Income-Tax Act.

A.I.R. 1944 F.C. 51.

A.I.R. 1944 (1) Cal. 34.

A.I.R. 1945 All. 354.

In the recent case (A.I.R. 1947 P.C. (8) the question whether Sec. 226 bars civil action in the original side of the High Court has been left open. Under the new constitution which is being framed by the Indian Constituent Assembly, this provision (Sec. 226) has been deleted. So the cases cited above may not be good law after the new constitution comes into being.

11. 47 Bom. 742 (P.C.) A.I.R. 1936 P.C. 269.

In cases arising under the present Income-Tax act, writ of *Mandamus* was negated on ground of other remedy being available. (A.I.R. 1934 Rang. 132). But under the Sales Tax Act, the remedy of the aggrieved party is limited and *Mandamus* lies within the meaning of 47 Bom. 742 (P.C.)

12. A.I.R. 1940 Bom. 234. Absence of territorial jurisdiction of officer.

the Crown.¹³ An application for revision either against the order of the Board of Revenue under Section 12 or against the proceedings or orders of officers under this Act is unsustainable. It has been held that the Board of Revenue acting under Section 172 of the Madras Estates Land Act is not a civil court and an application either under Section 115, C.P.C., or under Section 107 of the Government of India Act (1919), is not maintainable.¹⁴

Proceedings in Civil Courts.—Generally, civil courts have jurisdiction to entertain all suits of a civil nature “excepting suits of which their cognizance is expressly or impliedly barred.”¹⁵ The question of the jurisdiction of civil courts has to be examined with reference to two aspects, *viz.*, the rule of implied bar and the rule of express bar. The rule of implied bar may apply by reason of the constitution of separate tribunals under this Act.¹⁶ The rule has been clearly and succinctly stated in *Chitaley’s Code of Civil Procedure*.¹⁷

“Where a special tribunal or a public body is created by or under the authority of an Act of Legislature for *determining questions which are the creation of the Act*, the jurisdiction of that tribunal or body is exclusive and civil courts cannot take cognizance of such matters. Where the tribunal has acted *within its jurisdiction*, the jurisdiction of the Civil Court is barred in the absence of *mala fides* or fraud. Where however, the tribunal acts *ultra vires*, or refuses to exercise its jurisdiction or acts *mala fide* or arbitrarily, the civil court has power to interfere and set matters right.” (See below¹⁸ for instances of interference)

Even if jurisdiction is excluded, civil courts “can examine into cases whether provisions of the Act have not been complied with or whether the statutory tribunal has acted in conformity with the fundamental principles of judicial procedure.”¹⁹ Such actions are sustained even though a party has recourse to procedure of appeal before the special tribunal and fails.²⁰ In the absence of clearest

13. A.I.R. 1936 P.C. 269.

14. A.I.R. 1932 Mad. 612. See also A.I.R. 1928 Mad. 1038.

15. Sec. 9 C.P.C. Code.

16. Secs. 11 and 12.

17. *Chitaley’s C.P.C.* 2nd Edition, Volume I, page 100.

See A.I.R. 1939 Mad. 967.

A.I.R. 1938 Nag. 119.

A.I.R. 1942 Mad. 127.

18. Instances of interference by Civil Court.

See the following cases under Municipal and Local Boards Acts. Recovery of professional and other amounts illegally collected. 24, Mad. 205.

1932 M.W.N. 1089.

A.I.R. 1935 Mad. 298 (2).

A.I.R. 1938 Mad. 23.

A.I.R. 1939 Mad. 421.

A.I.R. 1942 Mad. 661.

A.I.R. 1941 Mad. 686.

1947 (1) M.L.J. 317.

19. A.I.R. 1940 P.C. 105.

20. A.I.R. 1935 Mad. 298 (2).

District Municipalities Act. Finality mentioned in rules does not shut out Civil Court’s Jurisdiction.

A.I.R. 1933 Rang. 229. Income Tax Act—Appeal before Commissioner failing—*ultra vires* registration—suit sustained.

See however A.I.R. 1940 P.C. 105. Sea Customs Act Case—obligations created by self contained Act—no challenge in Civil Court sustainable.

A.I.R. 1941 Mad. 530. Surcharge—unsuccessful appeal to Government on Civil suit lies since obligation is created by statute and not by common law.

See also A.I.R. 1932 Mad. 90.

words, courts would decline to infer an abrogation of the ordinary right of a subject to seek remedy in a civil court (*See* footnotes 18 and 20). *See* also cases under Section 11 under the heading "Final."

Suit contesting validity of tax or fee and recovery of tax illegally levied.

Unlike the Income-Tax Act, there is no express prohibition against an agitation of the legality of or propriety of an assessment, in a civil court.²¹ But the rule of implied bar applies.²² A suit will not lie challenging the method, or the quantum of assessment.²³ Similarly, if the assessing authority, on enquiry, which he is enjoined to make in law, comes to a conclusion as to whether preliminary facts exist, essential to give jurisdiction to assess and on arriving at a conclusion, however erroneously, levies tax, the assessment cannot be *set aside* by the civil court.²⁴ These are cases of assessments *under the Act*, and errors if any in such assessments call for rectification by the tribunals acting under the Act.²⁴ The case would be different if no inquiry is *permissible*, and the authority usurps jurisdiction and assesses.²⁴ The distinction is between an *erroneous decision on facts* as in the former set of cases, and an *illegal assumption of jurisdiction*²⁵ as in the latter class of cases. The former is not open to challenge in the civil court while the latter is. The distinction between proceedings without jurisdiction, and proceedings vitiated by mere irregularity is a very material one.²⁶ If an assessment is *ultra vires*, as where a person doing business outside British India or outside the Province is assessed or where the officer taxes *something* which is not taxable,²⁸ as, for instance, taxing turnover of a mortgage, or where the assessment is in violation of the exemptions permitted under the Act, as, for instance, taxing licensed agents or exempt or

21. *See* Sec. 67, Income-Tax Act.

22. A.I.R. 1940 P.C. 105.

Notwithstanding the statement of the Finance Minister to the contrary, regarding assessments "*under the Act*" jurisdiction is shut out by the principles of General Law, while such jurisdiction subsists in regard to assessments—*ultra vires of the Act*.

23. A.I.R. 1937 Lahore 721. A.I.R. 1937 Mad. 241.

See also (24) below. *See* under Sec. 9 "*Findings of Taxing officer*."

24. A.I.R. 1925 Sind 130.—

That officer wrongly held sum was received in British India or that figure arrived is inaccurate or arbitrary is no ground for interference. A.I.R. 1937 Mad. 241.—Enquiry whether a person is resident or non-resident and subsequent assessment not assailable. 42 Cal. 151.—Assessment after inquiry

not assailable. A.I.R. 1940(1) M.L.J. 704.—Amount of assessment not questionable case under Revenue Recovery Act. *See* also A.I.R. 1934 Mad. 715. A.I.R. 1922 Patna 361.—Assessing without allowing deduction for land revenue. A.I.R. 1928 Rang. 70 wrong persons assessed—no suit.

25. *See* 35 Cal. 859. and I.L.T.C. 25.—Taxing person with non-taxable income.

26. 1937 M. W. N. 1258. Case under Revenue Recovery Act.

27. A.I.R. 1926 Bom. 50. *See* also 1947(1) M.L.J. 317 Assessment having no legal existence—suit lies.

28. A.I.R. 1925 Sind 130. A.I.R. 1925 Sind 67.—super-tax assessment set aside. A.I.R. 1932 Sind 48. Refund of tax.

excepted articles, a suit in the Civil Courts will lie, such assessments being manifestly outside the purview of the Act.²⁹

But an assessment under a provision subsequently held to be *ultra vires* of the Legislature, was held not challengeable in a civil action as the assessment was one "under the Act."³⁰ For cases of absence of territorial jurisdiction.—See below.³¹

If tax is collected by threat of distress, suit cannot be resisted on the ground of payment being voluntary.³² Whether a consequential relief must be prayed or whether mere declaration is sufficient—See below.³³

All the above considerations apply equally to suits relating to illegal levy of licence fees, etc.

The view has been taken in a case decided by the Allahabad High Court that a suit for declaration that an assessment of tax is illegal, is a matter relating to taxation between the Government and the subject, and not a right of a civil nature arising between one subject and another subject, and that the suit consequently is not entertainable in the *Municipal Courts*.³⁴

Suits relating to licence.—Suits directing the Government to grant licence or suits to declare cancellation of licence to be *ultra vires*, or suits for declaration that a levy of fee is *ultra vires* may arise for consideration before Courts. Courts will decline to interfere with the discretion vested with the Government and its officers, unless the levy is *ultra vires* or unless the act of Government in refusing a licence or cancelling a licence or in imposing licence fee is arbitrary, fraudulent or is due to improper motives.³⁵ (See *Introduction*; meaning of "May" in Section 8.)

Injunction suits.—In view of Section 56 (d) of the Specific Relief Act, which prohibits the issue of injunction interfering with the public duties of any department of the Government, courts will not issue injunction restraining the authorities acting under this Act. "Where

29. I.L.R. 1944 (1) Cal. 34. (Income-Tax Act Case).

30. A.I.R. 1947 P.C. 78. (Income-Tax Act case.)

31. A.I.R. 1940 Bom. 234 and A.I.R. 1945 F.C. 9 (Income-Tax Act cases).

32. 19 M.L.J. 470.

33. Suit under Revenue Recovery Act—contesting validity of assessment held to be a statutory suit. No consequential relief needed. A.I.R. 1948 Mad. 261.

34. A.I.R. 1936 All. 117. But see above instances of suit, Footnotes 27, 28 & 29, etc.

35. A.I.R. 1930 Mad. 65 Licence fee is not tax.—Arbitrary raising of

fee to 800% Civil Court interfered. A.I.R. 1931 Madras 497 (Municipal Act) Licence fee—extremely disproportionate due to unfair discrimination fee held *ultra vires*. See also A.I.R. 1927 Rang. 183. A.I.R. 1943 Madras 191 Mere unjustified increase, in amount of licence fee levied not to be held *ultra vires*.

See also A.I.R. 1933 Mad. 148.

See observations of Cairns L., J. quoted in A.I.R. 1937 Mad. 51.

Powers vested for benefit of public—a duty arises—Power not to be arbitrarily exercised.

an act is by express enactment or otherwise, one that may be legally done by that department, it is not for the court to control the exercise of its discretion.”³⁶

Similarly, in view of Section 56 (e) of the Specific Relief Act, courts will not issue an order of injunction restraining criminal courts from proceeding with prosecutions in their courts under Section 15 of this Act.³⁷

So injunction suits restraining collection of tax or launching of prosecution does not lie but, if collection of tax is *ultra vires* suit lies.

Actions in torts.—As already stated no action can lie either against the Crown or against the officers of the Crown for anything done under this Act which is within the law.

In the case of actions against officers and servants for acts done by them which are beyond the purview of the statute, the initiation of proceedings would involve some difficulty. If the act of the officer or servant was done or was purported to be done under this Act sanction of the Provincial Government would be needed.³⁸ If the act of the officer was neither done nor purported to be done under this Act, sanction would not be necessary.³⁹

But an officer or servant is not responsible for damages, if the act was done “in good faith or in the course of execution of duties or the discharge of function imposed by or under this Act.”⁴⁰

Thus, in a suit for malicious prosecution against an officer or servant, besides the other elements needed to hold a person liable in such action⁴¹ absence of good faith would be needed if the claim is to be sustained.

In certain cases, the Government may be liable for the tortious acts of its servants. “The Government can be sued if it has expressly authorised or ratified or adopted the wrong act done by its officers.”⁴² Otherwise the Government is not responsible for the acts of

36. Collett's *Specific Relief Act* (page 446). 47 M.L.J. 780. No permanent injunction need issue against Government which can be trusted to act in accordance with Court's Judgment.

37. A.I.R. 1929 Mad. 345; A.I.R. 1928 Cal. 464. (Injunction against Municipality not granted.)

38. A.I.R. 1944 F.C. 41 and A.I.R. 1942 Mad. 539. Servants *bona fide* and mistakenly detaining Nabha Maharani—claim for damages against Crown servants—claim disallowed since no sanction obtained.

A.I.R. 1943 Mad. 167. Damages for trespass and carrying account books against Income-Tax Officer.

39. A.I.R. 1936 Mad. 547. Chairman maliciously prosecuting person. No sanction needed.

A.I.R. 1936 Mad. 547. Municipal Chairman—without authority prosecuting maliciously.

40. Sec. 17 (2).

41. Prosecution by defendant, its termination in Plaintiff's favour, absence of reasonable and probable cause and malice.

42. Ramasami Ayyar's *Law of Torts* (page 483).

A.I.R. 1944 F.C. 41.

A.I.R. 1942 Mad. 538.

51. C.W.N. 537.

misfeasance or negligence or omission of its subordinates and for acts done by officers in the exercise of their discretion ⁴³

One of the remedies for a tort being injunction "officers of the Government may be restrained from a wrongful act in the shape of a tort done under the plea of the command of the Government". ⁴⁴ But this remedy is very rarely available for there are appellate and revisional tribunals constituted under this Act having jurisdiction to effectively control the acts of the subordinate officers of the Government.

Prosecution of officers and servants.—There can be no prosecution of an officer for an act done within the four corners of the act, since such an act is no offence. Thus, an officer entering an assessee's premises in exercise of the power conferred by Section 14 of this Act is not liable to be prosecuted for trespass. If, however, though the act is beyond the power of the officer, it is purported to be done under this Act sanction would be needed for prosecuting the officer. No criminal liability attaches to the officer if the act has been done in good faith though in excess of the powers vested by the Act. [Section 17(2).]

Limitation and limits of Liability.—So far as suits or proceedings against officers and servants are concerned, if they relate to acts done or purporting to be done under this Act, sanction of the Provincial Government is needed, and they have to be brought within six months from the date of the act complained of. In other cases the ordinary rule of limitation applies. In all cases the liability of officer or servants does not arise in respect of anything "done in good faith, in the course of execution of duties or the discharge of functions imposed by or under this Act." [Section 17 (2).]

Notice in suit against officers.—Under Sec. 80, C. P. Code, notice must be sent to the Secretary to the Provincial Government or the Collector of the District, if a public officer is proceeded in civil action, in respect of any act, purporting to be done in his official capacity. No suit can be brought until the expiration of two months after the service of the notice. This prohibition does not apply if the act is not one purporting to be done in official capacity.

Sanction, Limitation and Notice.—The need for sanction under this section, the need for notice under Section 80, C. P. Code, and the period of limitation of six months, prescribed in Section 18 in respect of one kind of action against Crown servants (*i.e.*, action against an officer or servant of the Provincial Government when such act is done or purporting to be done under this Act) are co-extensive.

If the action is *against the officer or servant* in respect of any act, which is neither done nor purporting to be done under this Act,

43. A.I.R. 1933 Rang. 113. Negligence of servants.

A.I.R. 1931 Rang. 294. Malicious prosecution by Crown servants.

A.I.R. 1926 Mad. 1084. Wrong cancellation of licence by District Magistrate.

44. Collett's *Specific Relief Act*: (3rd Edition, page 446).

no sanction is needed, no notice is needed, and the rule of limitation is governed by the ordinary law set out in the Limitation Act.⁴⁵ For instance, refund of tax illegally collected may be governed by the 3 years rule of limitation under Act 62 of the Limitation Act⁴⁵ if the suit is otherwise maintainable, *e.g.*, where the act is *ultra vires*.

Similarly if the suit is for declaration relating to an illegal and *ultra vires* order of Government Article 120 of the Limitation Act applies, and suit can be filed within 6 years.⁴⁶

If the suit is one challenging an act on the ground of *irregularity*, such a suit is not maintainable. See above "Suit contesting validity of tax".

In all the above cases, if Government is sued notice is mandatory. If Crown servants alone are sued neither sanction nor notice is needed unless the act is one purported to be done under this Act.

Starting point of limitation.—There can be no final order till orders are passed in Appeal and Revision and limitation runs only from the date of the final order in revision.⁴⁷

Need for sanction—Stage of Determination.—The necessity for sanction cannot be made to depend on the case which the officer may put forward at the time of defence, but must be determined at the time of initiation of the proceedings⁴⁸ with reference to the character of the act⁴⁹ and the allegations made.⁴⁸ If on a consideration of the materials *at the time of initiation* it is clear that the acts were not purported to be done under the Act, then *prima facie* no sanction would be needed. If however the acts were purported to be done under the Act, the proceedings would be void in the absence of sanction. Even in the former case, if it is established that the acts were purported to be done in the execution of duty, the proceedings will fail for want of sanction.⁵⁰

Previous sanction.—The section (Section 17) requires previous sanction. Therefore sanction obtained after the commencement of proceedings is not sufficient.⁵¹

45. Illegal collection by Local Board and Municipality.

A.I.R. 1929 Mad. 409 and

A.I.R. 1936 Mad. 945.

Illegal collection of Profession Tax.

A.I.R. 1932 M.W.N. 1089.

A.I.R. 1939 Mad. 421.

Illegal collection of house tax by Panchayat Board.

A.I.R. 1941 Mad. 686.

46. A.I.R. 1934 Mad. 147. Case under Revenue Recovery Act.

47. A.I.R. 1941 Mad. 933. Case under Revenue Recovery Act, following 23 Cal. 775. P.C. 30. Mad. 367 to contrary not good law.

48. Decisions under Sec. 270, Government of India Act. A.I.R. 1939 F.C. 43 at page 45. and A.I.R. F.C. 25.

49. A.I.R. 1944 Pat. 285.

Magistrate—allegation of official act being corrupt and malicious—act nevertheless purports to be in official capacity.

50 A.I.R. 1939 F.C. 43

A.I.R. 1943 Cal. 593

51. 42 Bombay 172.

A.I.R. 1923 Mad. 338.

A.I.R. 1933 Sind 161.

Contra—defect held cured as no prejudice.

A.I.R. 1939 Lah. 479.

A.I.R. 1939 Lah. 1. A.I.R. 1935 Bom. 1.

Absence of sanction—Effect.—In the absence of sanction the proceedings are void.⁵²

Requisites of sanction.—No particular form is needed for granting sanction.⁵³ But the offence in respect of which a person is to be prosecuted should be stated.⁵⁴ Sanction need not be addressed to the court.⁵⁵

Done or purporting to be done.⁵⁶—The extreme view that *all acts* of a public servant are protected is incorrect. Equally incorrect is the other extreme view that the act complained of must be *strictly* within the scope of authority. The reason is this. An act completely within the scope of one's official duties is no offence and there is no need to apply this section.⁵⁷ Unquestionably all acts done in an *official capacity* are protected.⁵⁸ If an official acts under the orders of his superior, it is undoubtedly an official act.⁵⁹ Acts *purported* to be done in compliance with an official duty are also protected.⁶⁰ If the nature of the act is such that it can be done by the public servant only⁶¹ or if the offender professes or pretends to be acting in such capacity,⁶² the protection applies even if such act is in dereliction of duty imposed. If the act is done under a mistaken view of the duty imposed⁶³, the protection is nevertheless available. If the act is clearly connected as part of the same transaction with the official act or position of the public servant, as for instance when an officer enters the premises of a dealer and takes away account books, the officer is protected.⁶⁴ If, however, from the nature of the acts and other circumstances, it cannot be said that the act is done or purported, or pretended to be done, in an official capacity, or if the act is really done in private capacity, the protection does

52. A.I.R. 1939 F.C. 43 cases under Sec. 270, Government of India Act. See 42 Bombay 172. A.I.R. 1928 Allahabad 756 and 2 Weir. 710.

53. See 7 M. H. C. R. 58 and 27 Madras.

54. A.I.R. 1942 Mad. 347 (2)

55. See 16 Mad. 54.

A.I.R. 1947 Nag. 173.

Absence of particulars in sanction accused had no doubt about offence not invalid.

55. 39 Bom. L.R. 1056. See also A.I.R. 1933 All 543.

56. Sec. 17 closely resembles Sec. 270, Government of India Act, 1935 and Sec. 197, Cr. P. C.

57. A.I.R. 1939 F.C. 43. A.I.R. 1939 Mad. 604, abuse by party while Court dictating Judgment.—Court beating party; Sanction needed.

58. A.I.R. 1935 Mad. 319 Official

capacity—act of Magistrate; case under Sec. 197, Cr. P. C.

59. A.I.R. 1944 Nag. 337.

A.I.R. 1944 F.C. 49.

Cases under Sec. 270, Government of India Act.

60. A.I.R. 1939 F.C. 43 and other cases cited in (43).

61. A.I.R. 1941 Pat. 385.

Taking cognizance of complaint by Magistrate.

62. A.I.R. 1944 F.C. 41.

A.I.R. 1942 Mad 539. Cases under Sec. 27, Government of India Act.

63. A.I.R. 1943 Mad. 157 Income Tax Officer. See also A.I.R. 1935 Mad. 213 Cancellation of tender by Municipal chairman. A.I.R. 1935 Mad. 819, magistrate exceeding official duty.

not apply.⁶⁴ Whether an act complained of is one done or purporting to be one in an official capacity or not, is a question of fact.⁶⁵

Suit prosecution.....instituted.—A suit is instituted by the presentation of a plaint⁶⁶ while a prosecution or criminal proceeding is initiated by a complaint or upon a report by police.⁶⁷

Place of inquiry or trial in Criminal Courts.—See Chapter XV, Cr. P.C.

Place where suits to be filed. See C.P. Code. Ss. 15 to 20.

Within six months from.....act complained.—The period has to be reckoned from the date of the act complained of after excluding the day on which the act complained of happened.⁶⁸

Extension of time.—The present Act is a special Act, an Act taxing turnovers only, and a local Act, an Act applicable only to the Madras Province within the meaning of Section 29 of the Limitation Act. Therefore Sections 4, 9 to 18, and 22 of the Limitation Act would apply in computing the period of limitation. Further, Section 10 of the Madras General Clauses Act may apply.

The practical effect of the application of the provisions of the Limitation Act as also of Section 10 of the Madras General Clauses Act is, in the first place, to permit an assessee to institute a proceeding on Monday if the period of limitation prescribed in this Act expires on Sunday and secondly, if the period of limitation expires when courts are closed, the proceeding can be instituted on the day of re-opening of the court. Similarly, in computing the period of limitation, if there is fraud within the meaning of Section 18 of the Limitation Act, the benefit of the section would be available.⁶⁹ Where notice is sent under Section 80, C.P.C. the period of notice of 2 months has to be excluded in computing limitation for suing the Crown.⁶⁹

64. See the following cases of public servant embezzling, taking bribe, etc.

A.I.R. 1939 F.C. 43.

A.I.R. 1941 Sind 204.

A.I.R. 1944 F.C. 66.

A.I.R. 1945 F.C. 25.

1916 M.W.N. 384.

A.I.R. 1927 Mad. 566 and A.I.R. 1923 Mad. 475. Panchayat Board President threatening Voters.

A.I.R. 1946 F.C. 25. Station Master calling coolies and beating passenger.

4 L.W. 556 Chairman abusing person in street. See also A.I.R. 1935 Cal. 176.

A.I.R. 1935 Pat. 52. During realization of tax, officer assaulting a person for disrespectful conduct.

A.I.R. 1942 Mad. 745(2). Ex-President of Panchayat Board proceeded for failure to hand over charge.

65. A.I.R. 1939 F.C. 43.

A.I.R. 1935 Pat. 52.

A.I.R. 1928 Lah. 72.

68. Order 4 Rule 1 C.P.C.

67. Sec. 190 Cr. P. C.

68. Sec. 9(b) of Madras General Clauses Act.

By reason of Sec. 29(2) of Limitation Act, Sec. 12(1) of Limitation Act would also apply to the present enactment and the day on which the complained act happened has to be excluded. (See also commentary under Section 11).

69. See 1937 (2) M.L.J. 355. Case under Revenue Recovery Act.

In good faith.—A thing cannot be said to be done in good faith if it is not done with due care and caution.⁷⁰ Nothing can be said to be done or believed to be done in “good faith” which is done or believed to be done without due care or caution.⁷¹ A thing is deemed to be done in “good faith” where it is in fact done honestly whether negligently or not.⁷² The onus of proving good faith is on the public servant.⁷³ It is not sufficient for the public servant to show that he had a good intention. He must show that he exercised such care and skill in the execution of his duties as would be reasonably necessary.⁷⁴ But if an officer does an act which he does not believe to be necessary in the circumstances, the act cannot be said to be done in good faith.⁷⁵ It is doubtful whether mere non-compliance with the provisions of law would be evidence of absence of good faith.⁷⁶ The question of good faith is relevant only at the stage in which Section 17 (2) applies.⁷⁶ The question is to be decided at the time of trial and it is irrelevant for determining whether sanction is needed or not under Section 17 (1).⁷⁶

The following table would be useful :—

PROCEEDINGS (Secs. 17 & 18).

Nature of impugned act of officers or servants.		Against Crown Provincial Govt.	Against officers or servants of Pro. Govt.
Limitation.	Done under Act or purporting to be done under Act.	6 months.	6 months.
	Outside the Act and not purporting to be under Act.	General Law applies.	General Law applies.

70. (1911) 2 M. W. N. 479: 12 I.C. 654: 12 Cr. L.J. 566.

Sec. 3(11), Madras General Clauses Act.

Sec. 52 I.P.C.

Sec. 2(7), Limitation Act.

See also Sec. 499, Explanation (9), I.P.C.

See also Sec. 53, Provincial Insolvency Act.

71. Sec. 3(11), Madras General Clauses Act.

72. Sec. 3(20), General Clauses Act.

73. A.I.R. 1934 Oudh. 134.

Under Sec. 270(2), Government of India Act, 1935, the onus of proving want of good faith is on the party pleading it. So cases in A.I.R. 1942 Mad. 539 and 1942(2) M.L.J. 417 are inapplicable.

74. 21 Mad. 419.

75. A.I.R. 1932 Pat. 66.

76. A.I.R. 1939. F.C. 43 at pages 51 and 55.

PROCEEDINGS (Secs. 17 & 18).—*cont.*

Nature of impugned act of officers or servants.		Against Crown Provincial Govt.	Against officers or servants of Pro. Govt.
Notice.	Done under Act or pur- porting to be done under Act.	Needed.	Needed.
	Outside the Act and not purporting to be under Act.	Needed.	Not needed.
Sanction.	Done under Act or pur- porting to be done under Act.	..	Needed.
	Outside the Act and not purporting to be done under Act.	..	Not needed.
Liability.	Done under Act.	No liability.	No liability.
	Done outside the Act in good faith in execution of duties and discharge of functions.	Liable if rati- fied by Government.	Not liable.
Tribunal where re- medy lies.	Done under Act or pur- porting to be done under Act.	Before Tribu- nals under Act (Appeal Revision, etc.)	Before Tribu- nals under Act (Appeal Revision, etc.)
	Done outside the Act and not purporting to be done under Act.	Before Tribu- nals under Act and ordi- nary Tribu- nals of the land as well.	Before Tribu- nals under Act and ordi- nary Tribu- nals of the land as well.

SECTIONS 19 to 21

GENERAL NOTE

Section 19. confers power on the Provincial Government to make rules. Sub-section (1) sets out the general purpose of the rules. Sub-section (2) sets out the various matters in respect of which particularly

rules may be framed. Sub-section (3) makes breach of rules punishable while sub-sections (4) and (5) set out certain conditions before the rules come into operation. Section 20 contains a transactional provision. Section 21 arms Government with power to remove difficulties.

SECTION 19

POWER TO MAKE RULES

19. (1) The Provincial Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) all matters expressly required or allowed by this Act to be prescribed ;
- (b) the licensing of persons engaged in the sale of goods and the imposing of conditions in respect of the same for the purpose of enforcing the provisions of this Act and fees for licences ;
- (c) the assessment to tax under this Act of businesses which are discontinued or the ownership of which has changed ;
- (d) the assessment to tax under this Act of businesses owned by minors and other incapacitated persons or by persons residing outside the Province of Madras ;
- (e) the assessment of a business owned by any person whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator-General, the Official Trustee, or any receiver or manager appointed by or under any order of a Court ;
- (f) the assessment to tax under this Act of any turnover which has escaped assessment, and the period within which such assessment may be made, not exceeding three years ;
- (g) the rectification of mistakes apparent from the record of any assessment, appeal or

revision and the period within which such rectification may be made ;

- (h) compelling the submission of returns and the production of documents and enforcing the attendance of persons and examining them on oath or affirmation ;
- (i) securing that returns furnished or accounts or documents produced or evidence of any kind given under this Act before any assessing authority or on appeal or revision from any decision of such authority are kept confidential ;
- (j) the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act ;
- (k) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act ; and
- (l) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the purposes of this Act.

(3) In making a rule under sub-section (1) or sub-section (2), the Provincial Government may provide that a person guilty of a breach thereof shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with fine which may extend to one thousand rupees and, where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which the breach continues.

(4) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication for a period of not less than four weeks.

(5) All rules made under this section shall be published in the *Fort St. George Gazette*, and upon such publication shall have effect as if enacted in this Act.

NOTES

Sub-section 2

This sub-section makes provision for the framing of rules relating to (1) licences [clause (b)], (2) special cases of assessment [clauses (c) to (e)], (3) provisions calculated to ensure the availability of materials for proper assessment [19 (h), (g), and (i)], and (4) provisions intended to secure, on the one hand, the proper working of this Act [Clauses (g) to (k)], and on the other hand the proper functioning of officers under the Act [19 (j)]. Section 19 (k) provides for regulation of procedure and the forms to be used.

Clause (a). Instances of matters required to be prescribed under this Act :

See Section 2 (i) explanation

Sections 5 to 8

Section 11 (i) & (ii)

Section 13

Section 16, etc.,

For definition of 'prescribed' *See* Section 2 (f).

Clause (b) *See* Sections 5, 6 and 8, and Rules 5 to 8, General Sales Tax Rules.

Rules under this clause are intended for enforcing the provisions of this Act. Rules for issue of licences cannot be framed in respect of the sale of all goods generally but only in respect of goods mentioned in Sections 5 and 6 and in respect of an agent under Section 8. The reason is this. There is no provision in the Act for the grant of licence to a dealer generally and rules framed must be consistent with the Act.¹

Sub-clause (c) to (e).—Rules framed for assessment in special classes of business. *See* Rules 19 to 23, General Sales Tax Rules.

Control by the Administrator-General.—Section 9 of the Administrator-General's Act (3 of 1913) provides for administration by the Administrator-General of estates of persons other than persons exempted under that Act, if no person has applied for probate or letters of administration of the estate of the deceased.

Control by the Official Trustee.—Under Sections 8 and 9 of the Official Trustee's Act (2 of 1913) an Official Trustee may be appointed trustee of property by a person in a settlement or in a will, or the High Court may appoint an official trustee, as trustee of property under Section 10 of that Act.

1. A.I.R. 1934 Cal. 537. (*See Introduction—Interpretation of Rules*)

Manager or receiver appointed by court.—The reference is to appointment of receivers in suits pending disposal thereof under Order 40, Rule I, C.P.C., or to receivers appointed under Section 44 of Specific Relief Act as part of the relief prayed for in the suit.

Sub-clause (f). The maximum period for assessment of turnover which has escaped taxation is fixed at three years in this sub-section.² But the rule framed (R. 17, General Sales Tax Rules) fixes the period as two years.

Sub-clause (g). See G.S.T.R. 18.

Sub-clause (h). See G.S.T.R. 24 to 27 Rules framed.

(i) to compel submission of return.³

(ii) to compel production of documents.⁴

(iii) to enforce attendance of witnesses.⁵

(iv) to examine witnesses on oath or affirmation.⁶

Sub-clause (i). See G.S.T.R. 30.⁷

Sub-clause (j). Officers enforcing the Act mean officers concerned with assessment and officers enforcing the licensing provisions as well (Sections 5, 6 and 8). See also Section 14 of this Act which sets out the powers of certain officers. For list of powers see "powers of officers" under "Analytical Study of the Taxation Law" Introduction.

Sub-clause (k). Procedure may relate to assessment or licence. Procedure may relate to appeal and revision. Forms also can be prescribed. (See Sections 9 to 12.)

Sub-section (3).

See Commentary to Section 15 and see also Rule 32, G.S.T. Rules.

Sub-sections 4 and 5.—The sub-sections provide for the publishing of draft rules for four weeks and further publication of them as approved finally⁸. The rules are to be published in the *Fort St. George Gazette*. Rules for determining turnover see Section 3.

SECTION 20.

20. Transitional provision for levy of tax for the second half of the year 1939-40 has become spent and has been repealed by Act XXV of 1947.

SECTION 21.

POWER TO REMOVE DIFFICULTIES.

21. If any difficulty arises in giving effect to the provisions of this Act, the Provincial Government may, as occasion may require, by order, do anything

2. Cp. Sec. 34, Income-Tax Act which fixes the period at one year.

3. Cp. Sec. 35, Income-Tax Act.

4. S. 15(a) of this Act makes failure to submit return punishable.

5. Cp. Sec. 37(b), Income-Tax Act.

6. Cp. Sec. 37(a), Income-Tax Act.

7. Cp. Sec. 54, Income-Tax Act.

8. See "Interpretation of Rules" Introduction.

A.I.R. 1923 Pat. 1 (S.B.). On such final publication the rules have the force of law.

which appears to them necessary for the purpose of removing the difficulty.

NOTES.

The object of Section 19 (2) (l) and Section 21 is to provide for the need to remedy any lacuna in working the Act. "The provisions are not intended to alter the law" as approved by the Legislature or to "add to the laws of the land substantially without Legislative sanction." The provisions are not intended to provide a means of escape from the Legislative machinery of the land.⁹

THE MADRAS GENERAL SALES TAX (TURNOVER AND ASSESSMENT) RULES.

HISTORY OF THE MADRAS GENERAL SALES TAX (TURNOVER AND ASSESSMENT) RULES

These rules were published in draft in the *Fort St. George Gazette* dated 18th July, 1939. They were placed before the Legislative Assembly on the 7th August and with a few minor changes were approved by that body. [See Section 3 (2) proviso.] The rules as approved by the Assembly were published in the *Fort St. George Gazette* (Extraordinary) dated 15th September, 1939. Like all rules framed under the Act, these rules have the force of law. [Section 19 (5).]

By reason of the Amending Act XXV of 1947 changes were made in the rules and the amendments were published in the *Fort St. George Gazette* on 23rd December, 1947. Legally these rules also ought to have been published for a period of four weeks in the draft form and for a fifth time in the finalised form. These amendments to the rules were approved by the Legislative Assembly on 19th December, 1947. The amendments to rules operate from 1st January, 1948.

REVENUE DEPARTMENT

Madras General Sales Tax (Turnover and Assessment) Rules, 1939
[*Fort St. George, September 12/1939 and*

Fort St. George Gazette, dated 23rd December, 1947.]

In exercise of the powers conferred by sub-section (4) and (5) of Section 3 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased to make the following rules:—

RULES.

1. These rules may be called the Madras General Sales Tax (Turnover and Assessment) Rules, 1939.

2. These rules shall come into force on the 1st day of October, 1939.

9. Premier's speech in Legislative Council in 1939.

3. In these rules, unless there is anything repugnant in the subject or context—

- (a) “the Act” means the Madras General Sales Tax Act, 1939;
- (b) “Form” means a form appended to these rules;
- (c) “Government treasury” means a treasury or sub-treasury of the Provincial Government;
- (d) “month” means a calendar month; and
- (e) “section” means a section of the Act.

Comments on Rule 3.

“Unless there is anything . . . repugnant . . .”. See Commentaries to Section 2.

4. (1) Save as provided in sub-rule (2) the gross turnover of a dealer for the purposes of these rules shall be the amount for which goods are sold by him.

(2) In the case of the undermentioned goods the gross turnover of a dealer for the purposes of these rules shall be the amount for which the goods are bought by him.

- (a) groundnut,
- (b) cashew,
- (c) untanned hides and skins bought by a licensed tanner in the Province, and
- (d) untanned hides and skins exported outside the Province by a licensed dealer in hides or skins.

(3) For the purposes of sub-rule (1), the amount for which goods are sold by a dealer shall, in relation to a works contract, be deemed to be the amount payable to the dealer for carrying out such contract less a sum not exceeding such percentage of the amount payable as may be fixed by the Board of Revenue, from time to time for different areas, representing the usual proportion in such areas of the cost of labour to the cost of materials used in carrying out such contract, subject to the following maximum percentages :—

	Per cent.
(a) in the case of an electrical contract	20
(b) in the case of a structural contract	30
(c) in the case of a sanitary contract	33½
(d) in the case of other contracts	30

Comments on Rule 4.

The two taxation schemes, seller's scheme and buyer's scheme are set out.

Sub-rules 1 and 2. These must be read with Section 3 (5) proviso. Certain goods which are generally articles of export are taxed at the stage of purchase or on the *buyer's basis* while in the generality of cases goods are taxed at the stage of sale or on the *sellers' basis*. See “Assessment” under “Analytical Study of the Taxation Law” Introduction.

(b) **Cashew** :—A plea to include it, in articles entitled to rebate under Section 7 was unsuccessful in the Legislature in 1939.

(c) and (d). See commentaries to Section 5 under “Hides and Skins” See also “Assessment” under “Analytical Study of the Taxation Law”. Introduction.

Sub-rule 3. This sub-rule must be read with Section 2(i). This sub-rule provides that in the case of a contractor, a percentage shall be deducted from the

total contract amount payable to him such percentage representing the value of services. The resultant amount represents roughly the *value of goods* or materials sold. This new sub-rule operates only from 1-1-48. See Comments to Section 3, Section 2 (h), (i) and 2 (u)

The percentage may be fixed by the Board of Revenue with reference to different areas of the Province.

The upper limit of the percentage is however specified in the rule.

Electrical contract. Fitting electrical connection (etc.)

Structural contract. Buildings contracts, etc.

Sanitary contract. Contract for providing sanitary conveniences like flush-out, bath room, (etc.)

4-A. Subject to the provisions of Section 5,—

(i) the sale of cotton yarn other than handspun yarn, shall be liable to tax under Section 3 (1) when sold by a person who in the Province is the first dealer in such yarn who is not exempt from taxation under Section 3 (3) :

*Provided that the burden of proving that a transaction is not liable to taxation under this clause shall be on the dealer.*¹

(ii) the sale of bullion and specie shall be liable to tax under Section 3 (1) when sold by a person who in the Province is the first dealer in such bullion and specie who is not exempt from taxation under Section 3 (3) :

Provided that the burden of proving that a transaction is not liable to taxation under this clause shall be on the dealer ;

(iii) the sale of a newspaper shall be liable to tax under Section 3 (1) when sold by a person who in the Province is the first dealer in such newspaper who is not exempt from taxation under Section 3 (3) :

Provided that the burden of proving that a transaction is not liable to taxation under this clause shall be on the dealer.

Comments on Rule 4-A (New).

(See commentaries to Section 5 and " Licensing " under " Analytical Study of the Taxation Law " Introduction, pages xxv to xlii).

This new rule prescribes in accordance with the recommendations of the Select Committee, the taxation points for the following :

(1) Bullion and specie (one point).

(2) Newspapers (one point).

Cotton yarn other than handspun yarn is taxable at a single point, under the Amending Act of 1948¹.

1. The Turnover Rule 4 A (i) fixes the single point provided in Sec. 5 (ii) (as amended by Act XVI of 1948), and operates from 1st September 1948.

Before Act XVI of 1948, Act XXV of 1947 provided for taxation of non-handspun yarn at two points. The Turnover Rule 4 A-(i) fixing the two points was as follows :—

(i) the sale of cotton yarn other than hand-spun yarn shall be liable to tax under Section 3 (1) at the two points of sale specified below :—

(a) when sold by the ex-mill

quota-holder, namely, the A class licensee under the Government of India Scheme for distribution of mill yarn in the Province ;

(b) when sold by the wholesaler, namely, the B class licensee under the said scheme ;

But in view of the Amending Act XVI of 1948, making non-handspun taxable at one point, this rule is rendered in-operative. The two points (A & B class licensees' sales) however apply from 1st January to the end of March 1948. See Commentaries to Sec. 5.

4-B. The sale of any of the goods mentioned in items (i) to (vii) in section 3, sub-section (2), shall be subject to the tax specified in that sub-section at the stage of sale by the person who in the Province is the first dealer in such goods, who is not exempt from taxation under section 3 (3)";

Comments to Rule 4 B (New).

(See Commentaries to Section 3, and "Assessment" under "Analytical Study of the Taxation Law" Introduction xxv to xxviii).

This new rule prescribes the point for additional taxation of luxury articles. The principle is that the tax is to be levied on the first dealer in the chain of transactions of dealers having taxable turnover

5. (1) The tax or taxes under section 3 or 5 or under notification 6 (1) shall be levied on the net turnover of a dealer. In determining the net turnover the amounts specified in clauses (a) to (k) shall, subject to the conditions specified therein, be deducted from the gross turnover of a dealer—

(a) all amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of a contract or agreement entered into in a particular case and provided also that the accounts show that the purchaser has paid only the sum originally charged less the discount ;

(b) all amounts allowed to purchasers in respect of goods returned by them to the dealer, provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made or credit was allowed to the purchaser ;

(c) all amounts for which the dealer sells articles which are not in his stock but which are obtained by him from another dealer specially to accommodate a particular customer and are immediately sold to such customer, provided that the sale is entered in the accounts then and there as an accommodation sale together with the name of the dealer from whom the articles were obtained and provided that the accommodating dealer does not make a profit out of the transaction.

(d) all amounts for which goods excluded from the operation of the Act under section 4 are sold, provided that separate accounts are kept for transactions in each of such goods ;

(e) all amounts for which goods exempted under section 5 are sold, provided that the dealer is licensed under the Act in respect of such business and that the transactions are by virtue of the Act or these rules or the provisions of the licence exempt from taxation under the Act ;

(f) all amounts for which goods are sold or purchased by a person licensed under section 8, provided that such sales or purchases are exempted from taxation under the Act by virtue of the provisions of the Act or these rules or the terms of the licence ;

(g) all amounts falling under the following two heads, when specified and charged for by the dealer separately without including them in the price of goods sold :—

(i) freight ;
(ii) charges for packing and delivery and other such like services.

(h) all amounts realised by the sale by a dealer of his business as a whole ;

(i) the excise duty, if any, paid by the dealer to the Central Government in respect of the goods sold by him,

(j) all amounts for which salt is sold ; and

(k) all amounts which a registered manufacturer of ground-nut oil and cake may be entitled to deduct from his gross turnover under rule 18 subject to the conditions specified in that rule.

(2) In the case of dealers having more than one place of business the aggregate turnover of all such places of business shall be taken as the turnover of the business for the purpose of these rules. All returns prescribed by these rules shall in such cases be submitted by the head office in the Province and shall include the turnover of all branches of the business. Each branch shall also—

(a) submit to the assessing authority of the area in which it is situated, a return of the turnover of the branch in Form A or Form A-3, as the case may be ; and

(b) intimate to such authority the fact that the return of the turnover of its business is included in the return submitted by its head office and specify the name and address of such head office.

(3) For the purpose of determining whether a dealer is eligible for exemption under section 3 (3) only the net turnover as defined in sub-rule (1) shall be taken into consideration.

Comments on Rule 5.

See Assessment under “Analytical Study of the Taxation Law” Introduction.

Sub-Rule 1 of Turnover Rule 5.

(a) **Discount.** This sub-rule must be read with the first portion of explanation (iii) to Section 2 (i) :

(b) **Refund.** This sub-rule must be read with the second portion of explanation (ii) to Section 2 (i). The terms “goods returned” include also the value of containers returned².

(c) **Accommodation Dealer.** This sub-rule must be read with explanation (iii) to section 2 (i).

Immediately, Article. See Commentary to Section 2 (i).

(d) This sub-rule must be read with Section 4.

(e) This sub-rule must be read with Section 5.

(f) This sub-rule must be read with Section 8.

(g) (Old) clause (g) which related to hides and skins was omitted since it is covered by sub-clause (e) which covers present section 5 (including hides and skins).

(New) clause (g) allows deduction of freight, packing and delivery charges if shown separately. Before 1-1-48, the deduction was permitted by executive instructions.

(h) **Business as going concern.** The sub-rule carries out the assurance of the Premier that sale of business as such as a going concern is not taxable. If, however, up to the date of sale, there is taxable turnover the seller is liable, even as the buyer is liable to be taxed on the taxable turnover³, in respect of sales effected thereafter by him (buyer).

(i) (New) Clause (i) enlarges concession to all articles in respect of which any excise duty is paid to the Central Government. Relief was formerly available only to sales of sugar, matches or rubber tyres or tubes. In actual practice relief is now available to tea, coffee, arecanut, handloom cloth, besides the articles in respect of which concession was available under the prior clause.

(k) Value of groundnut or kernel purchased is deducted from the sales turnover of groundnut oil and cake. (See T.R. 18).

No such deduction is allowed for cocoanut used in cocoanut oil.

Sale of by-products. No deduction is allowable.

Sub-rule 2 of T. R. 5.

Turnover of Firm and Branches.

(i) **Head Office and Branches in Province.** Aggregate turnover of branches must be included in the turnover to be submitted by the head office. Each branch must also submit a return. [T. R. 5 (2).]

(ii) **Branches only within Province.** If the head office is outside the Province, but the branches are situated within the Province, the turnover of the branches alone has to be considered in fixing tax. The branches may be so many agents within the meaning of Section 14A. But each of them is taxable even if each has non-assessable turnover. If the aggregate turnover is non-assessable the tax will be refunded (Sec. 14A).

(iii) **Head Office within Province.** If the head office alone is situated within the province, the head office alone is a dealer. It is immaterial that the turnover of the branches is shown in the accounts of the head office. "If, however, dubious transactions are allotted to the branches to escape transaction", Government can certainly examine whether the transaction of sale is within the Province or not.⁴

5-A. (1) Every dealer carrying on business in any year shall submit his application for registration under Section 8-A to the assessing authority of the area in which his principal place of business is situated, before the expiry of the month succeeding that in which his turnover in that year reached Rs. 7,500 :

Provided that in the case of a dealer carrying on business in the year 1947-48, such application shall be made not later than the 1st February 1948, if the turnover in that year reaches Rs. 7,500 at any time before the 1st January 1948.

(2) Any dealer who is not bound to submit an application for registration under sub-rule (1) may, if he so desires, apply for registration

3. A.I.R 1927 P.C. 76.

4. Premier's Speech in Legislative Assembly (1939).

under section 8-A to the assessing authority of the area in which his principal place of business is situated.

(3) Every application under sub-rule (1) or the proviso thereto shall be made in Form A-6 and every application under sub-rule (2) in Form A-7.

(4) Each application for registration shall be accompanied by a receipt from a Government treasury or a cheque or a money order in favour of the assessing authority for Rs. 6.

(5) The assessing authority receiving the application shall, if he is satisfied that the prescribed fee has been paid, grant a certificate of registration in Form A-8.

(6) Every registered dealer shall, until his registration is cancelled, pay the fee of Rs. 6 specified in sub-rule (4), for every year subsequent to that in which he applied for registration, on or before the 1st May of that year.

(7) A registered dealer may collect amounts by way of tax or taxes under the Act subject to the following conditions :—

(i) He shall not collect any amount or amounts by way of tax or taxes under the Act at a rate or rates exceeding the rate or rates specified in section 3 or 5 or notified under section 6 (1).

(ii) He shall pay in full the amount or amounts collected by him by way of tax or taxes to the Provincial Government on or before the 30th April of the year succeeding that in which such collection is made.

(8) The assessing authority may call for and examine the accounts of the registered dealer the purpose of satisfying himself that the dealer has paid in full the amount or amounts collected by him by way of tax or taxes, as required by condition (ii) in sub-rule (7) :

Provided that this power shall be exercised before the end of the year next succeeding that in which the collections were made.

(9) If the assessing authority is satisfied that any amount or amounts collected by the dealer by way of tax or taxes have not been paid by him to the Provincial Government in any year as required by condition (ii) in sub-rule (7), the assessing authority shall issue a notice to the dealer in Form B-2 specifying therein the total sum so withheld by the dealer and the dealer shall pay such sum at the time and in the manner specified therein.

Comments on Rule 5 A (New)

(See Commentaries to Sec. 8A & 8B)

This rule prescribes the method of compulsory and voluntary registration of dealers under Section 8A (New) and collection of tax or taxes from them under Section 8B (New).

6. (1) Every dealer commencing business after the first day of October 1939 whose estimated net turnover for the first twelve months of his business is not less than Rs. 10,000 shall within thirty days of commencing his business submit to the assessing authority of the area in which his principal place of business is situated a return in

Form A-1 showing his estimated gross and net turnover for the first twelve months of his business.

(2) Every dealer commencing business who has not submitted a return under sub-rule (1), but whose turnover reaches Rs. 10,000 within the first twelve months of the commencement of his business, shall within thirty days of the day on which his turnover reaches Rs. 10,000, submit to the assessing authority of the area in which his principal place of business is situated a return in Form A-1.

7. If the assessing authority, after making such scrutiny of the accounts of the dealer and such enquiry as such authority may consider necessary, is satisfied that the return submitted under rule 6 is correct and complete, he shall fix provisionally on the basis of the return the annual tax or taxes payable at the rate or rates specified in section 3 or 5 or notified under section 6 (1) :

Provided that in respect of the year 1947-48, the assessing authority shall fix provisionally in the said manner and at the said rate or rates the tax or taxes payable (a) for the period up to and inclusive of the 31st December 1947, and (b) for the period commencing on the 1st January 1948 and ending with the 31st March 1948.

8. If no return is submitted by the dealer as required by rule 6 or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such enquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and fix provisionally the annual tax or taxes payable at the rate or rates specified in section 3 or 5 or notified under section 6 (1) :

Provided that in respect of the year 1947-48, the assessing authority shall fix provisionally in the said manner and at the said rate or rates the tax or taxes payable (a) for the period up to and inclusive of the 31st December 1947, and (b) for the period commencing on the 1st January 1948 and ending with the 31st March 1948.

9. Where any return submitted by a dealer appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, before taking action under rule 8, issue a notice to the dealer calling upon him to produce his accounts and prove the correctness and completeness of his return at a time and place to be specified in the notice.

10. As soon as the tax has been provisionally fixed under rule 7 or rule 8 the assessing authority shall issue to the dealer a notice in Form A-2 and the dealer shall pay for each month of the year of assessment one-twelfth of the tax provisionally fixed at the time and in the manner specified in the notice, the monthly instalments due for the months preceding the date of the notice being paid in a lump sum :

Provided that in respect of the year 1947-48, if the notice aforesaid has been issued to the dealer before the 1st January 1948, it shall be deemed to have been lawfully issued, and the tax as provisionally fixed therein

shall be deemed to have been lawfully fixed, in respect of the first three quarters of the year; and a fresh notice in Form A-2 shall be issued to the dealer in regard to the last quarter of the year and the tax provisionally fixed therein shall be paid at the time and in the manner specified in the notice:

Provided further that if no such notice is issued to the dealer before the 1st January 1948, the assessing authority shall issue notice to him in Form A-2 separately for each of the two periods, viz., (a) the first three quarters of the year, and (b) the last quarter of the year, and the tax provisionally fixed for each of those periods shall be paid at the time and in the manner specified in the notice.

11. (1) Every dealer liable to submit a return under rule 6, except those who have elected to be assessed by the method described in rule 13, shall, on or before the first day of May in every year, submit to the assessing authority of the area in which his principal place of business is situated a return in Form A, showing the actual gross and net turnover for the preceding year and the amounts by way of taxes actually collected during that year.

Every dealer not liable to submit a return under rule 6, who has a net turnover of not less than Rs. 10,000 in any year, shall unless he has elected to be assessed by the method described in rule 13 submit to the assessing authority of the area in which his principal place of business is situated a return in Form A showing the actual gross and net turnover for that year and the amount by way of tax or taxes actually collected during the year on or before the 1st day of May of the succeeding year and thereafter for every year on or before the 1st day of May immediately following such year.

(2) On the receipt of a return in Form A the assessing authority shall, if he is satisfied after such scrutiny of the accounts and such enquiry as he considers necessary that the return is correct and complete, finally assess on the basis of the return the tax or taxes payable under section 3, 5 or 8-B (2) or under the notification or notifications issued under section 6 (1) for the preceding year.

(3) If no return is submitted or if the return submitted appears to the assessing authority to be incorrect or incomplete, the assessing authority may, after following the procedure prescribed in rules 8 and 9, finally assess the tax according to the best of his judgment.

(4) The assessing authority shall, as soon as may be after the 1st May

(a) make a provisional assessment for the current year on the basis of the return received from the dealer under sub-rule (1) or, if such return is not submitted on or before the 1st May or if the return so submitted appears to the assessing authority to be incorrect or incomplete, according to the best of his judgment;

Provided that in respect of the year 1947-48, the assessing authority shall make provisional assessments separately for (a) the first three quarters of the year, and (b) for the last quarter of the year.

(b) issue to the dealer a notice in Form A-2.

Until an assessee receives such notice of provisional assessment, he shall continue to pay tax as in the preceding year, unless he is not liable to pay tax in the current year. Any tax so paid shall be adjusted when the provisional assessment for the year has been fixed :

Provided that in respect of the year 1947-48, if the notice aforesaid has been issued to the dealer before the 1st January 1948, it shall be deemed to have been lawfully issued, and the tax as provisionally fixed therein shall be deemed to have been lawfully fixed in respect of the first three quarters of the year ; and a fresh notice in Form A-2 shall be issued to the dealer in regard to the last quarter of the year and the tax provisionally fixed therein shall be paid at the time and in the manner specified in the notice :

Provided further that if no such notice is issued to the dealer before the 1st January 1948, the assessing authority shall issue notice to him in Form A-2 separately for each of the two periods, viz., (a) the first three quarters of the year and (b) the last quarter of the year, and the tax provisionally fixed for each of those periods shall be paid at the time and in the manner specified in the notice :

Provided also that in respect of the year beginning on the first day of April 1948, he shall continue to pay tax as in the last quarter of the preceding year.

12. If the final assessment made under sub-rule (2) or (3) of rule 11 is greater than the provisional assessment made under rule 7, rule 8 or sub-rule (4) of rule 11, the assessing authority shall serve upon the dealer a notice in Form B, and the dealer shall pay the sum demanded at the time and in the manner specified in the notice. If the final assessment is lower than the provisional assessment, he shall serve upon the dealer a notice in Form C.

12-A. The amount of tax or taxes provisionally fixed for a year under rule 7, 8 or 11 and the instalments specified in the notice in Form A-2 issued under rule 10 or 11 shall, if they include annas and pies, be rounded by omitting the annas and pies.

13. (1) In lieu of the method of assessment described in rules 7 to 12 the method described in sub-rules (2) to (5) may, at the option of the dealer, be adopted at any time in the case of dealers, whose net turnover exceeds Rs. 20,000. If the dealer desires that this method of assessment should be applied to him from the beginning of any year, he shall intimate his desire to the assessing authority at the time of submitting the return prescribed in rule 6 or thereafter before the 1st of April in any year. If, however, he exercises the option after the commencement of any year he shall, along with the intimation of his exercise of such option, submit to the assessing

authority a return in Form A-3 showing the gross and net turnover for the period commencing from the beginning of that year up to the end of the month immediately preceding and the tax or taxes actually collected during that period, and shall therewith forward a receipt from a Government treasury or a cheque in favour of the assessing authority for the full amount of the tax or taxes payable by him for such period after deducting therefrom any tax or taxes he might have paid for that year under rule 10.

(2) The dealer shall submit to the assessing authority on or before the last day of every month, a return in Form A-3 showing the gross and net turnover for the preceding month *and the amount or amounts actually collected by way of tax or taxes during that month*. Along with the return he shall also submit a receipt from a Government treasury or a cheque in favour of the assessing authority for the full amount of the tax or taxes payable for the months to which the return relates, under *section 3, 5 or 8-B (2) or under the notification or notifications issued under section 6 (1)*.

(3) On receipt of the return and of the receipt or cheque referred to in sub-rule (2) the assessing authority shall, after such scrutiny of the accounts and after making such enquiry as he considers necessary, satisfy himself that the return is correct and complete and that the correct amount of tax or taxes has been paid.

(4) If no return is submitted in respect of any month before the last day of the succeeding month or if the return is submitted, without a receipt or cheque for the full amount of the tax payable or if the return submitted appears to be incorrect or incomplete, the assessing authority shall, after making such enquiry as he considers necessary, and after giving the dealer an opportunity as prescribed in rule 9 of proving the correctness and completeness of his return, where one has been submitted, determine the turnover to the best of his judgment and assess the tax or taxes payable for the month and shall serve upon the dealer a notice in Form B-1 and the dealer shall pay the sum demanded at the time and in the manner specified in the notice.

(5) If at the time of the receipt of the return referred to in sub-rule (3) or of the issue of the notice in Form B-1 referred to in sub-rule (4) or subsequently it is found that the amount paid by the dealer is in excess of the correct amount payable under *section 3, 5 or 8-B (2) or under the notification or notifications issued under section 6 (1)*, such excess shall, at the option of the dealer, be credited towards the tax or taxes, if any, payable by him for succeeding months or be refunded to him.

14. If in any case the assessing authority determines the turnover at a figure different from that shown in a return submitted under the provisions of these rules, he shall record his reasons briefly in writing and shall furnish the assessee with a copy of such record. Nothing contained in this rule shall affect the validity of any assessment duly made.

15. (1) Rules 6 to 13 shall not apply to licensed tanners and other licensed dealers in hides or skins in respect of their dealings in hides or skins; but the provisions of this and the following rule shall apply to them in respect of such dealings

(2) Every tanner or other dealer in hides or skins whose net turnover for a year has been or is expected to be not less than Rs. 10,000 shall submit to the assessing authority, on or before the last day of November 1939 (or the last day of the month following that in which he commences business) and thereafter on or before the last day of every month, a return in Form A-4 or, as the case may be, in Form A-5 showing his transactions for the preceding month. Along with the return he shall also submit a receipt from a Government treasury or a cheque in favour of the assessing authority for the full amount of the tax payable for the month to which the return relates.

(3) On receipt of the return and of the receipt or cheque referred to in sub-rule (2) the assessing authority shall, after such scrutiny of the accounts and after making such enquiry as he considers necessary, satisfy himself that the return is correct and complete and that the correct amount of tax has been paid.

(4) If no return is submitted in respect of any month before the last day of the succeeding month or if the return is submitted without a receipt or cheque for the full amount of the tax or if the return submitted appears to be incorrect or incomplete, the assessing authority shall, after making such enquiry as he considers necessary, and after giving the tanner or other dealer an opportunity as prescribed in rule 9 of proving the correctness and completeness of his return where one has been submitted, determine the turnover to the best of his judgment and assess the tax payable for the month and shall serve upon the tanner or other dealer a notice in Form B-1 and the tanner or other dealer shall pay the sum demanded at the time and in the manner specified in the notice.

(5) If at the time of the receipt of the return referred to in sub-rule (3) or of the issue of the notice in Form B-1 referred to in sub-rule (4) or subsequently, it is found that the amount paid by the tanner or other dealer is in excess of the correct tax payable, such excess shall, at the option of the tanner or other dealer, be credited towards the tax, if any, payable by him for succeeding months or be refunded to him.

16. (1) In the case of hides and skins the tax payable under section 3 (1) shall be levied in accordance with the provisions of this rule.

(2) No tax shall be levied on the sale of untanned hides or skins by a licensed dealer in hides or skins except at the stage at which such hides or skins are sold to a tanner in the Province or are sold for export outside the Province.

(i) In the case of all untanned hides or skins sold to a tanner in the Province, the tax shall be levied from the tanner on the amount for which the hides or skins are bought by him.

(ii) In the case of all untanned hides or skins which are not sold to a tanner in the Province but are exported outside the Province,

the tax shall be levied from the dealer who was the last dealer not exempt from taxation under section 3 (3) who buys them in the Province, on the amount for which they were bought by him.

(3) Sales by licensed dealers of hides or skins which have been tanned within the Province shall be exempt from taxation provided that the hides or skins have been tanned in a tannery which has paid the tax leviable under the Act. If such hides or skins have been tanned in a tannery which is exempt from taxation under section 3 (3), the sale of such hides or skins shall be liable to taxation as under the next sub-rule below dealing with hides or skins tanned outside the Province.

(4) Sales by licensed dealers in hides or skins which have been tanned outside the Province shall be exempt from taxation except at the stage of sale by the dealer who is the first dealer not exempt from taxation under section 3 (3) who sells them within the Province. The tax shall be levied from such dealer on the amount for which he sells such hides or skins.

(5) Sale of hides or skins by dealers other than licensed dealers in hides or skins shall, subject to the provisions of section 3, be liable to taxation on each occasion of sale.

Comments on Rules 6 to 16

Rules 6 to 16 must be read with Secs. 3, 5 & 9 of the Act.

Rules 6 to 12 relate to the annual system. Rule 13 relates to the monthly system. Rules 15 and 16 relate to Hides and Skins which are also governed by the monthly system.

Assessing Authority—See Sec. 2 a-1 and “Assessment” under “Analytical Study of the Taxation Law” Introduction.

T. R. 7 proviso, T. R. 8 proviso, T. R. 11 proviso.

These are transitional provisions for 1947-48.

Assessment to Best of Judgment. See Commentaries to Sec. 9.

Service of demand notice.

There is no provision in the Act and rules requiring that notice of demand must be served only personally. For instance, in the case of a firm, service of notice on a partner is sufficient to make all partners liable and all partners can be proceeded against ¹ under Sec. 15.

“Every year.....such year” [Sub-para. 2 of T. R. 11(1).]

The extensive import of the words “every year” is limited by the succeeding words. The closing words “such year” refer to the year in which persons hit by the sub-clause have a taxable turnover. When in *any year* a person has a taxable turnover (under sub-clause 2) he has to submit a return of turnover in respect of that year on the first of May of the succeeding year and for the immediate *next year* also irrespective of whether for the latter year he has a taxable turnover. If he has a taxable turnover for the latter year, he must submit a return for the next year also and so on. Thus if in the year 1944-45 a person hit by sub-clause 2 has a taxable turnover; he has to submit a return on 1st May 1945 though for the latter year, the return is below the taxation limit. If a person has a taxable turnover for 1945-46 also he must submit return for the next year also though for the latter year his return is below the taxation limit.

T. R. 11 (2) not retrospective.

It was held with reference to para 2 of rule 11 that the amendment to rule 11 cannot create an offence retrospectively. If a person was not liable to submit a

1. See 1947 (2) M.L.J. 255, case under present Act.

return under rule 6 the amendment to rule 11 (para 2) coming into operation when a prosecution was pending and making such person liable to submit return, cannot operate retrospectively and create an offence.²

T. R. 11 (4).

Rule 11 (4) (as amended) permits *provisional assessment for current year* being made without a concurrent final assessment. Such final assessment must be made within a reasonable time. There is nothing in the Act and Rules specifying the period within which a taxing officer must complete his examination of returns and any inquiry, he may make upon matters arising out of returns. A demand in February 1944 of additional tax in respect of transactions not included in returns submitted for 1942-43 (accounting year) was held valid.³

T. R. 12A.

This rule of *omission of all annas and pies* is applicable only to provisional assessments under rules 7, 8 and 11 and *not to final* assessments. The reason is obvious. At the time of final checking up, whatever balance of tax is payable by the assessee can be recovered, and it is unnecessary to add to administrative inconvenience in provisional assessments. As the rule speaks of *omission*, rounding off to the nearest anna or rupee by addition of pies or annas is illegal. So even if by calculation the provisional assessment comes to 15 annas and 9 pies, the annas and pies must be omitted without rounding off the amount to the nearest rupee.

Tax or taxes, collected, payable under Secs. 3, 5, 8B (2), or under notification under Sec. 6

The wording is necessitated by the provisions involving (i) additional luxury tax (Sec. 3); (ii) differential rates of tax under Sec. 5; (iii), fixation of differential rates if any in notification under Sec. 6; and (iv) payment by dealer of *entire* tax collected by him from his customers.

In regard to the submission of return in the monthly system, and the final submission of return in the annual system, not only the turnover, but the tax or the taxes collected from customers must also be mentioned. When the final assessment is made, the assessing authority, after scrutiny of accounts, etc., may determine the turnover, assess finally and fix also the amount if any payable under T. R. 8B(2) *viz.*, amount of tax or taxes collected by dealer and withheld from Government.

Last day of every month for preceding month.

For instance, the return for the month of April must be submitted on or before the 31st May.

17. Every dealer who has bought or sold goods for valuable consideration other than money, shall separately specify in the return of turnover which he is required to submit under these rules the quantity of goods so bought or sold and the description in sufficient detail of the valuable consideration for which the goods were bought or sold. The assessing authority shall fix the value of such consideration in money for the purpose of determining the turnover and assessment of the tax payable under the Act and the value fixed by such authority shall, subject to the appeal and revision provided for in the Act and the rules made thereunder, be final.

Comments on Rule 17

See Commentaries to Sec. 2 (h). The rule must be read with Sec. 2 (h)

Where a dealer transfers by sale a finished silver article receiving from the buyer the making charges and equivalent weight of silver, the turnover is the making charges plus the price of silver got from the buyer.

(2) A.I.R. 1942 Mad. 736 (1). (Case under present Act. (3) 1947 (1) M. L. J. Short notes 14 (Case under present Act).

18. (1) Any dealer who manufactures groundnut oil and cake from groundnut and/or kernel purchased by him may, on application to the assessing authority having jurisdiction over the area in which he carries on his business, be registered as a manufacturer of groundnut oil and cake.

(2) Every such manufacturer shall be entitled to a deduction under clause (k) of sub-rule (1) of rule 5 equal to the value of the groundnut and/or kernel purchased and converted by him into oil and cake provided that the amount for which the oil is sold is included in his turnover.

Explanation.—For the purpose of this sub-rule—

(a) 143 lb. of groundnut shall be taken to be equivalent to 100 lb. of kernel ;

(b) 143 lb. groundnut or 100 lb. of kernel shall, when converted into oil, be taken to yield 43 lb. of oil ; and

(c) one candy of oil shall be taken to be equivalent to 500 lb. of oil.

(3) Every such manufacturer shall, not later than the last day of every month, submit a statement to the registering authority furnishing the following particulars in respect of transactions relating to the previous month .—

(i) the aggregate amount of groundnut and/or kernel purchased by him, and the total purchase price ; and

(ii) the quantity of the groundnut oil manufactured, the amount for which it was sold and the amount included in the turnover.

(4) For the purpose of sub-rule (2), the value of the groundnut and/or kernel shall be calculated on the price for which the manufacturer purchased the groundnut and/or kernel in the month to which his application for deduction relates, or if no purchase was made in that month, in the last preceding month in which the manufacturer made the purchase.

(5) No deduction under clause (k) or sub-rule (1) of rule 5 shall be allowed in connexion with the sale of groundnut cake.

Comments

GROUNDNUT

[See also T. R. 5 (1) (k)]

Groundnut (including groundnut kernel) is within the buyer's scheme of taxation [T. R. 4 (2)] while groundnut-oil and cake are in the seller's scheme [T. R. 4(1)]. 4 In consequence of representations, that groundnuts were taxed twice both at the stage of *purchase* as nut and kernel, and at the stage of *sale* as oil and cake, concession was allowed. The concession is this :—

From the sales turnover of groundnut oil and cake the purchase value of groundnut or kernel used in the manufacture of oil has to be deducted [T. R. 5(1) (k)]. This rule regulates and sets out the mode of ascertaining the amount of deduction allowed. If the dealer is not registered as contemplated in the rule deduction is not allowable.

COCOANUT.

No deduction is allowed for cocoanut purchased and used in the manufacture of cocoanut oil.

194-A.

Add the following after sub-clause (3) and before sub-clause (4) of Rule 18.

If any such manufacturer submits the statement referred to in sub-rule (3) after the last day of the month or if he omits to furnish therein any of the particulars required by that sub-rule, the Commercial Tax Officer of the district concerned may, in his discretion, after making such enquiry as he considers necessary, condone the delay or omission or both; provided that such manufacturer has maintained a true and correct account of his business showing all the particulars required by sub-rule (3).

Comments.

The above amendment was placed before the Legislative Assembly on the 21st January 1949, by the Finance Minister.

This amendment vests in the Commercial Tax Officer of the district the power of condoning delay in furnishing or omission to furnish particulars. Thus the rigour of clause (3) is to some extent modified by this amendment.

FORM A.

Return of turnover.

[See rule 11 (1)]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our turnover for the year ending the 31st March 19 :—

Statement.

Name(s) and postal address(es) of dealer(s).	Place or places of business.	Nature of business (nature of goods bought or sold).	Rate or rates at which he collected the tax or taxes.	Amount of gross turnover.	Turnover and description of each class of goods exempt from the tax.	Discount allowed.	Amount refunded in respect of articles returned by customers.	Turnover of accommodation sales.	Net turnover liable to the tax.	Amount actually collected by way of tax or taxes.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the year ending the 31st March 19 .

Place.....

Date.....

Signature of dealer (s).

NOTE.—(1) Give the turnover of the immediately preceding financial year.

(2) In column (2), note the addresses of the headquarters and of all branches of the business to which the return relates.

(3) The turnover of each class of goods for which exemption is claimed should be specified separately in column (6).

(4) The transactions in different kinds of goods subject to different rates of tax under the Act should be shown in different lines. The totals of the vertical columns should be shown in the last line.

FORM A-1

Return of $\frac{\text{turnover}}{\text{estimated turnover}}$

[See rule 6 (1) and (2)]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our for the first twelve months of business. I/We commenced

business on..... $\frac{\text{turnover}}{\text{estimated turnover}}$

Statement.

Name(s) and address(es) of dealer(s).	Place or places of business.	Nature of business (nature of goods bought or sold).	Rate or rates at which he collected the tax or taxes.	Gross or estimated gross turnover.	Turnover or estimated turnover exempt from the tax.	Net turnover or estimated net turnover liable to the tax.
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Declaration

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it represents my/our

• $\frac{\text{turnover}}{\text{estimated of the turnover likely to be realised}}$ for the first twelve months of business.

Place.....

Date.....

Signature of dealer(s).

Note :—(1) In column (2) note the addresses of the headquarters and of all the branches of the business to which the return relates.

(2) The transactions in different kinds of goods subject to different rates of tax under the Act should be shown in different lines. The totals of the vertical columns should be shown in the last line.

(3) Separate figures must be given in column (6) for each class of exempted goods.

FORM A-2

Notice of provisional assessment and demand for payment of tax or taxes.

[See rules 10 and 11]

To

(The dealer)

Take notice that you have been provisionally assessed, under the Madras General Sales Tax Act, 1939, to a tax of Rs.....
..... [(rupees.....

..... year ending 31st March 19 ..
..... first three quarters of the year
..... (in words)] only for the ending 31st March 1948.
..... last quarter of the year ending
..... 31st March 1948.

This tax shall be paid in monthly instalments of Rs.....
[rupees.....(in words)] only. The
tax for the first three quarters of the year 1947-48 shall be paid in
for the last quarter of the year 1947-48
monthly instalments of.....[rupees.....(in words)] only.
The tax for the months preceding the date of this notice

The tax for the first three quarters of the year 1947-48
and the tax for the months of the last quarter preceding the date
of this notice shall be paid within twenty-one days from the date of
service of this notice and the tax for each of the remaining months
before the 10th day of the succeeding month

by money order to the undersigned
by cheque in favour of the undersigned
by remittance into the Government treasury at.....
to the headman of.....
to the tax-collector who will call for it

failing which the amounts will be recovered as if they were arrears
of land revenue and you will be liable to fine as provided in Section 15
of the Madras General Sales Tax Act, 1939.

Turnover as determined by assessing authority in respect of—

Nature of goods. (1)	Rate of tax. (2)	Turnover. (3)

Total ..

Place.....

Date.....

Assessing authority.

Note.—(1) If payment is made by cheque, the cheque shall be such as under the Madras Treasury Code may be received by the Treasury concerned.

(2) The assessee shall continue to pay tax in the following year at the rate specified above pending the provisional assessment for that year in accordance with rule 11 (4) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939.

(3) The tax paid by the assessee for the months preceding the date of this notice in accordance with the provisional assessment for the preceding year shall be adjusted towards the tax payable under this notice. If the tax so paid is less than the amount payable under this notice for the months concerned he shall pay the difference within fifteen days from the date of service of this notice.

FORM A-3

Return of turnover.

[See rule 12 (2)]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our turnover for the month of.....

Statement

Name(s) and postal address(es) of dealer(s).	Place or places of business.	Nature of business (nature of goods bought or sold).	Rate or rates at which he collected the tax or taxes.	Amount of gross turnover.	Turnover and description of each class of goods exempt from the tax.	Discount allowed.	Amount refunded in respect of articles returned by customers.	Turnover of accommodation sales.	Net turnover liable to the tax.	Amount actually collected by way of tax or taxes.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

Declaration

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of.....

Place.....

Date.....

Signature of dealer(s).

Note.—(1) In column (2) note the addresses of the headquarters and of all the branches of the business to which the return relates.

(2) The turnover of each class of goods for which exemption is claimed should be specified separately in column (6).

(3) The transactions in different kinds of goods subject to different rates of tax under the Act should be shown in different lines. The totals of the vertical columns should be shown in the last line.

FORM A-4

Return of turnover in the case of tanners

[See rule 15 (2)]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our turnover for the month of.....

Statement

Name(s) and postal address(es) as tanner(s). (1)	Place or places of business. (2)	Amount for which hides and skins were purchased for tanning by the assessee(s). (3)

Declaration.

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of.....

Place.....

Date.....

Signature of tanner(s).

NOTE.—Note in column (2) the addresses of the head office and of all the branches of the business to which the return relates.

FORM A-5

Return of turnover in the case of dealers in hides or skins
 [See rule 15 (2)]

To

The Assessing Authority.

Sir,

I/We furnish below a statement showing my/our transactions for the month of

Name(s) and postal address(es) of dealer(s).....

Place or places of business.. ..

Statement

(a) For dealers in untanned hides or skins.—

Amount for which goods have been sold to tanneries in the Province.	Amount for which goods have been sold to other dealers in the Province.	Amount for which goods have been sold on export outside the Province.	Amount for which goods falling under column (3) were purchased by the dealer(s).
(1)	(2)	(3)	(4)

(b) For dealers in tanned hides or skins.—

Amount for which hides or skins tanned in the Province were sold.	Amount for which hides or skins tanned outside the Province were sold.	
	(i)	(ii)
(1)	Hides or skins bought from dealers in the Province.	Hides or skins bought from dealers outside the Province.

Declaration

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of

Place.....

Date.....

Signature of dealer(s).

Note.—Note in column (2) the addresses of the head office and of all the branches of the business which the return relates.

FORM A-6 [New]

Application for registration as a dealer

[See rule 5-A]

To

The Assessing Authority

Sir,

I/We.....submit this application for registration as dealer(s) under the Madras General Sales Tax Act, 1939 at.....

2. I/We carry on business at the following places in addition to the place specified above.

3. I/We enclose a treasury receipt/cheque for Rs. 6 (Rupees six only) being the fee for registration.

Note.—If the fee is sent by money order, mention the date of remittance.

4. My turnover in the year ending 31st March 19.....reached Rs.7,500 only on.....

Place.....

Date.....

Signature of applicant(s).

Note.—Where payment is made by cheque, the cheque should be such as under the Madras Treasury Code may be received by the Government treasury concerned.

FORM A-7 [New]

Application for registration as a dealer

[See rule 5-A]

To

The Assessing Authority

Sir,

I/We.....submit this application for registration as dealer(s) under the Madras General Sales Tax Act, 1939, at.....

2. I/We carry on business at the following places in addition to the places specified above.

3. I/We enclose a treasury receipt/cheque for Rs. 6 (Rupees six only) being the fee for the registration.

Note.—If the fee is sent by money order, mention the date of remittance.

4. My/Our turnover for the period..... is Rs.....(in words) only.

Place.....

Date.....

Signature of applicant(s)

Note.—Where payment is made by cheque, the cheque should be such as under the Madras Treasury Code may be received by the Government treasury concerned.

FORM A-8 [New]

Certificate No. dated.

[See rule 5-A]

..... having paid a registration fee of Rs 6 (Rupees six) only is/are hereby registered as dealer(s) at subject to the provisions of the Act, the rules made thereunder and the following conditions :—

(1) He shall pay the entire amount of tax collected by him to the Government.

(2) No correction in this certificate shall be valid unless ordered and attested by the undersigned.

2. Turnover reported in Form A-6 or Form A-7 is Rs.

Place.....

Date.....

Assessing Authority.

Note.—This certificate of registration should be exhibited at a conspicuous place within the premises of the business specified above and should be open for inspection.

FORM B

Notice of final annual assessment and demand

(See rule 12)

To

(Dealer)

Take notice that you have been finally assessed under the Madras General Sales Tax Act, 1939, to a tax of Rs. [rupees (in words)] only for the year ending the 31st March 19 , and that, after deducting the total amount of the monthly payment(s) already made by you towards the tax for that year, you have to pay a (further) sum of Rs. [rupees..... (in words)] only. This balance of tax shall be paid within twenty-one days from the date of service of the notice—

by cheque in favour of the undersigned

by remittance into the Government treasury at

to the headman of

to the tax-collector who will call for it

failing which the amount will be recovered as if it were an arrear of land revenue and you will be liable to fine as provided in section 15 of the Madras General Sales Tax Act, 1939. Turnover as finally determined by the assessing authority in respect of—

Nature of goods.

Rate of tax.

Turnover.

(1)

(2)

(3)

Total Rs ..

Place.....

Date.....

Assessing Authority.

Note.—If payment is made by cheque, the cheque shall be such as under the Madras Treasury Code may be received by the Treasury concerned.

FORM B-1.

Notice of final monthly assessment and demand

To

[See rule 13 (4) and (5)]

(Dealer)

Take notice that you have been assessed under the Madras General Sales Tax Act, 1939, to a tax of Rs.....[rupees..... (in words)] only for the month of19.., and that after deducting the payment(s) already made by you towards the tax for that month you have to pay a (further) sum of Rs..... [rupees.....(in words)] only. This amount shall be paid within twenty-one days from the date of service of this notice

by cheque in favour of the undersigned, or

by remittance into the Government treasury at..... failing which the amount will be recovered as if it were an arrear of land revenue and you will be liable to fine as provided in section 15 of the Madras General Sales Tax Act, 1939.

Turnover as determined by the assessing authority in respect of—

Nature of goods.

Rate of tax.

Turnover.

(1)

(2)

(3)

Total Rs. ..

Place.....

Date.....

Assessing Authority.

Note.—If payment is made by cheque, the cheque shall be such as under the Madras Treasury Code may be received by the Treasury concerned.

FORM B-2 (NEW)

To

(See rule 5-A)

(Dealer)

Take notice that for the year ending.....* (after deducting the payments made by you) a sum of Rs..... [rupees.....(in words)] only is due and payable by you, being the

amount

* balance of amount collected by you by way of tax or taxes under section 3 or 5 of the notification or notifications under section 6(1) of the Madras General Sales Tax Act, 1939. The said sum of Rs.....shall be paid within 21 days from the date of service of this notice

by cheque in favour of the undersigned,

by remittance into the Government treasury at.....
to the headman of ..

to the tax collector who will call for it

failing which the amount will be recovered as if it were an arrear of land revenue and you will be liable to fine as provided in section 15 of the Madras Sales Tax Act, 1939.

Place.....

Date.....

Assessing Authority.

Note.—If payment is made by cheque, the cheque shall be such as under the Madras Treasury Code may be received by the Treasury concerned.

* To be struck off if no payment was made.

FORM C.

Notice of final assessment and refund order.

[See rule 12]

To

(Dealer)

Take notice that you have been finally assessed under the Madras General Sales Tax Act, 1939, to a tax of Rs. [rupees (in words)] only for the year ending the 31st March 19 The total amount of tax paid by you already is Rs. [rupees (in words)] only, that is, Rs. in excess of the tax due. A refund order is enclosed. You should apply to the Government treasury at for the refund of this sum within three months from the date of service of this notice failing which the amount will lapse to the Government.

Turnover as finally determined by the Assessing Authority in respect of—

Nature of goods.
(1)

Rate of tax.
(2)

Turnover.
(3)

Total Rs.

Place

Date

Assessing Authority.

FORMS

Comments

There is no "religiosity" about the forms appended to the rules. The entries in the forms are only intended to prevent evasion to give information wanted by the authorities under the Act. If in actual working, there is considerable inconvenience in supplying information, it is hoped that officers acting under the Act would accept the difficulties. [*Premier's reply to Mr. T. T. Krishnamachari's amendment to delete columns 4 and 6 in Forms A-1 and A-3 (Legislative Assembly Debates, 1939.)*]

Forms A & A-1

Columns 4 and 11 in Form A and column 4 in Form A1 have been inserted by reason of amendments to rules and are necessitated by differential rates of taxes under Secs. 3 and 5 and the provision in Section 8B (2) and T. R. 5A(7) (ii) that the entire collections of taxes must be paid to Government.

Form A-2

The amended form makes additional provision for fixing provisional assessment for nine months till the 31st December at the then prevailing rates and for the next three months at the amended rates.

Form A-3 to A-8

These forms are new and are necessitated by Section 8A (New) providing for registration.

Forms B & B-1

The addition of the columns (1) and (2) is necessary in view of the differential rates of tax on different goods under Sections 3 and 5.

Form B-2

This notice is for collection of the excess of amount remaining payable by the dealer on final check up, representing collections of tax made by him but withheld from Government. [Section 8B (2) and T. R. 5A(9).]

THE MADRAS GENERAL SALES TAX RULES

History of the Madras General Sales Tax Rules

These rules in draft were published in the *Fort St. George Gazette* dated 28-7-39. After the expiry of the period of four weeks as prescribed in Sections 19(4), they were published in the *Fort St. George Gazette Extraordinary* dated 15th September, 1939 as finally approved by the Government. These rules have also the operation of law by reason of Section 19(5) of the Act. Amendments to the rules consequent on the Amending Act XXV of 1947 were published in the *Fort St. George Gazette* dated 29-12-47. The rules were finalised and were published in the *Fort St. George Gazette* dated 17-2-48. The amendments to the rules operate from 1-1-48.

THE MADRAS GENERAL SALES TAX RULES

Fort St. George Gazette, September 12, 1939

and

(*G. O. No. 2375, Revenue. dated February 17, 1948*)

No. 819

In exercise of the powers conferred by Section 19 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased to make the following rules :—

RULES

PART I—PRELIMINARY

1. These rules may be called the Madras General Sales Tax Rules, 1939.

2. They shall come into force on the 1st day of October, 1939.

3. In these rules, unless there is anything repugnant in the subject or context

(a) “the Act” means the Madras General Sales Tax Act, 1939 ;

(b) “Assistant Commercial Tax Officer” means any person appointed by the District Collector by name or by virtue of his office to exercise the powers of an Assistant Commercial Tax Officer ;

(c) “Commercial Tax Officer” means any person appointed by the Provincial Government, by name or by virtue of his office, to exercise the powers of a Commercial Tax Officer ;

(d) “Deputy Commercial Tax Officer” means any person appointed by the District Collector, by name or by virtue of his office, to exercise the powers of a Deputy Commercial Tax Officer ;

(dd) “Deputy Commissioner of Commercial Taxes” meant any person appointed by the Provincial Government, by name or by virtue of his office, to exercise the powers of a Deputy Commissioner of Commercial Taxes ;

(e) "Form" means a form appended to these rules ;

(f) "Government treasury" means a treasury or sub-treasury of the Provincial Government ;

(g) "licensing authority" means the authority competent to issue licences under sections 5, 6 and 8 ;

(h) "month" means a calendar month ; and

(i) "section" means a section of the Act.

4. For the purposes of these rules a person who deals in goods other than cloth and in cloth woven on handlooms *wholly with handspun yarn* shall, if he has no dealings in cloth of any other description, be deemed to be a person dealing exclusively in cloth woven on handlooms, *wholly with handspun yarn* in so far as his dealings in cloth are concerned.

Comments on Rule 4.

This rule must be read with section 5. This rule carries out the assurance of the Premier that section 4 would not be subjected to far-fetched misapplication. A grocery merchant selling foodstuffs to villagers, and also hand-woven cloth, (wholly with handspun yarn) is entitled to exemption under section 5 and under this rule. "The exemption from tax provided in section 5 of the Act in respect of cloth woven on handlooms with handspun yarn and sold by persons dealing exclusively in such cloth will not apply to a concern which deals both in cloth woven on handlooms wholly with handspun yarn, and in other kinds of cloth even if it keeps separate accounts and stock for the two kinds of cloth. As long as the firm is the same mere separation of accounts cannot confer any advantage and the exemption will not be available." (*Press Communiqué issued by the Ministry of Public Information*).

See also comments to section 5 and "Licensing" under "Analytical Study of the Taxation Law", Introduction.

PART II—LICENCES

5. (1) Every person who—

(a) deals in cotton and/or cotton yarn other than handspun yarn and/or handspun yarn, or

(b) deals exclusively in cloth woven on handlooms, wholly with handspun yarn, or

(c) deals in cloth woven on handlooms wholly or partly with mill yarn, or

(d) deals in bullion and/or specie, or

(e) deals in hides and/or skins whether as a tanner or otherwise, or

(f) for an agreed commission or brokerage, buys and/or sells goods of any description on behalf of known principals, shall, if he desires to avail himself of the exemption provided in sections 5 and 8 or of the concession of taxation only at a single point or of taxation at the rate specified in section 5, submit an application in

Form I for a licence in respect of each of his places of business to the authority specified in sub-rule (2) so as to reach him not later than the 30th day of April of the year for which the licence is applied for :

Provided that in the case of a business which is commenced in the course of a financial year, the dealer shall submit the application for the licence to such authority so as to reach him not later than thirty days from the date of commencement of his business.

Provided further that, where the exemption or concession aforesaid was conferred for the first time by the Madras General Sales Tax (Amendment) Act, 1947 and the dealer had commenced business before the 1st January 1948, he shall submit the application for the licence not later than the 1st March 1948.

Note.—The agent of a person (including a firm) outside the Province is in respect of transactions on behalf of such person a dealer for all the purposes of the Act and the rules made thereunder and is not eligible for a licence under section 8 in respect of such transactions.

(2) The application shall be submitted—

(i) to the assessing authority if the applicant is liable to tax or taxes under the provisions of the Act and the rules made thereunder, and

(ii) to the Assistant Commercial Tax Officer having jurisdiction over the principal place of business, in other cases.

6. (1) Every licence shall cover one place of business only and shall expire on the 31st day of March of the year in respect of which it is granted but may be renewed for periods not exceeding one year at a time on receipt of an application from the licensee.

(1-A) Notwithstanding anything contained in sub-rule (1) a licence shall, in addition to the licensee's place of business, cover such shandies as may be entered in the licence, provided that the said shandies shall be within the taluk in which the licensee's place of business is situated and that the turnover at the said shandies shall be included in the turnover at the licensee's place of business.

(2) Every application for renewal shall be submitted in Form I so as to reach the licensing authority not later than the 30th April of the year for which the renewal is required.

(3) If an application for the grant or renewal of a licence is received after the date prescribed therefor, the licence shall not ordinarily be granted or renewed with effect from a date prior to the date of the receipt of the application and shall expire on the 31st day of March of the year in respect of which it is granted or renewed :

Provided that the Commercial Tax Officer of the district may, in any deserving case, direct the licensing authority to accept an application for the grant or renewal of a licence received after the prescribed date and issue the licence with retrospective effect on the applicant's paying as penalty such sum, not exceeding the following limits, as may be fixed by the Commercial Tax Officer, namely :—

(a) Rs. 50, in a case where the licence is issued free of fee, that is, for cloth woven on handlooms *wholly with handspun yarn*

(b) nine times the licence fee in addition to the usual licence fee, in all other cases.

(4) (a) The fees for the grant or renewal of a licence shall, *subject to a maximum of Rs. 1,000* be as follows :—

	<i>If the turnover does not exceed Rs. 20,000 per annum.</i>	<i>If the turnover exceeds Rs. 20,000 per annum but does not exceed Rs. 1,00,000.</i>	<i>For every additional turnover of one lakh or fraction thereof.</i>
	Rs.	Rs.	Rs.
1. <i>For dealing in cotton and/or cotton yarn other than hand-spun yarn and/or handspun yarn.</i>	75	150	} 100
2. <i>For dealing in cloth woven on handlooms wholly or partly with mill yarn.</i>	25	50	
3. <i>For dealing in bullion and/or specie.</i>	75	150	
4. <i>For dealing in hides and/or skins whether as a tanner or otherwise.</i>	25	50	
5. <i>For dealing as specified in section 8</i>	100	200	

(b) No fee shall be payable for the grant or renewal of a licence for dealing exclusively in cloth woven on handlooms wholly with hand-spun yarn.

(c) The licence fee specified in clause (a) on the estimated turnover shall be payable in advance along with the application for the grant or renewal of a licence, and the fee so paid shall be provisional and shall be subject to revision and adjustment in the manner provided in these rules.

(d) Every applicant for the grant or renewal of a licence shall enclose with his application a treasury receipt or a cheque in favour of the licensing authority for the amount of the fees. . .

(5) The licensing authority receiving the application may, if he is satisfied that the information furnished in the application is correct and complete and that the correct fee has been paid and that the applicant is eligible for the licence applied for, grant or as the case may be, renew a licence in such one of the Forms II to V as may be appropriate to his case.

If the information furnished in the application appears to be incorrect or incomplete or if the correct fee has not been paid, the licensing authority shall, before granting or renewing a licence, make such enquiry as he considers necessary and after giving the applicant an opportunity as provided in rule 9 of the Madras General Sales Tax Turnover and Assessment Rules, of proving the correctness and completeness of the information so furnished, determine the estimated turnover to the best of his judgment and assess the fee provisionally payable in accordance with the scale laid down in sub-rule (4) and shall serve upon the applicant a notice of demand and the applicant shall pay the sum demanded at the time and in the manner specified in the notice. On payment by the applicant of the sum demanded in the notice, the licensing authority may, if he is satisfied that the applicant is eligible for the licence applied for, grant or renew a licence in such one of the Forms III to V as may be appropriate to his case.

(6) Every licence granted or renewed under these rules shall be deemed to have been issued personally to the licensee. No licence shall be sold or transferred.

(7) Where a licensee transfers his business to another person, the transferee shall obtain a fresh licence under these rules, but it shall be granted free of fee for the residue of the period covered by the original licence.

(8) Where a licence granted or renewed under these rules is lost or accidentally destroyed, a duplicate of the licence may be issued by the licensing authority on payment of a fee of one rupee.

(9) Every licensee under section 8 shall submit to the licensing authority on or before the first day of May a return in Form VI for the year ending 31st March immediately preceding.

(10) Every licensee other than a tanner or dealer in hides or skins shall, unless he submits returns under rule 11 or 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, submit on or before the 20th day of June in every year to the licensing authority a return in Form VII of the turnover for the preceding year of all the business done by him.

(11) (a) On receipt of the return in Form VI or Form VII or the return or returns submitted under rules 11, 13 or 15 of the Madras

General Sales Tax (Turnover and Assessment) Rules, the licensing authority shall, if he is satisfied after such scrutiny of the accounts of the licensee and after making such enquiries as he considers necessary, that the return or returns are correct and complete, determine on the basis of the return or returns the turnover of dealings in respect of which the licence was issued and finally assess the licence fee payable for the year to which the licence related in accordance with the scale laid down in sub-rule (4).

(b) If no return or returns are submitted, or if the return or returns submitted appear to the licensing authority to be incorrect or incomplete, the licensing authority shall, after following the procedure laid down in rules 8 and 9 of the Madras General Sales Tax (Turnover and Assessment) Rules determine the turnover dealings in respect of which the licence was issued and finally assess the licence fee payable for the year to which the licence related in accordance with the scale laid down in sub-rule (4)

(c) If the licence fee as finally assessed under this sub-rule is greater than the licence fee provisionally paid under sub-rule (4) or sub-rule (5), the licensing authority shall serve upon the licensee a notice of demand and the licensee shall pay the sum demanded at the time and in the manner specified in the notice. If the licence fee as finally assessed is lower than the licence fee provisionally paid under sub-rule (4) or sub-rule (5), the licensing authority shall refund the amount due to the licensee.

(d) The benefit of sections 5 and 8 may be claimed only after paying the balance of licence fee, if any, which may be demanded under clause (c).

(12) *Licences issued under these rules for the year 1947-48, before the 1st January 1948, shall be subject to the provisions of the relevant notifications under section (6) (1) in so far as the period commencing on the date is concerned*

7. Subject to the provisions of section 6-A the benefit of sections 5 and 8 may be claimed only for the transactions carried on during the period covered by a licence.

8. Every licence granted or renewed under these rules shall be liable to cancellation by the licensing authority in the event of a breach of any of the provisions of the Act, or of the rules made thereunder or of the conditions of the licence.

Comments on Rules 5 to 8

See "Licensing" under "Analytical Study of the Taxation Law" Introduction. The rules must be read with sections 5 and 8. See comments to sections 5 and 8.

The Government have issued "instructions that in cases in which a dealer has more than one place of business, the head office may submit applications

for licences under rule 5(1) and the returns prescribed under the rules in respect of the branch or subordinate offices also." (*Press Communiqué issued by the Ministry of Public Information*).

Rule 6 (5) Best "Judgment" See Commentaries to Sec. 9

Cotton, handspun yarn, bullion and specie, etc. See Section 5 Commentaries.
Person.....handloom.....with handspun yarn. See Section 5 and G. S. T. R. 4 above.

Agreed commission..... See Section 8 Commentaries.

Net turnover : See T.R. 4 and 5.

G. S. T. R. 5(1) proviso (2) and G. S. T. R. 6 (12).

(See "Note on Transitional Law for 1947-48" Introduction).

These are transitional provisions for 1947-48 modifying the main provision under Rule 5. Normally an application for licence has to be filed so as to reach the authorities before the 30th April (30 days after commencement of year). (Rule 5). In regard to licensees with an *operative licence issued in April 1947 (before 1st January 1948 under unamended law)* the licences are valid and continue to be operative subject to this *modification*, viz., that they would be subject to notifications if any issued under section 6. No notifications have been issued under G. S. T. R. 6 (12). If a licence is *necessitated* only by the amended rules there can be no prior operative licence for 1947-48. So to cover such a case proviso 2 of rule 5 makes provision for a dealer entitled to exemption for the first time applying for licence before the 1st March 1948, and the licence would operate only till the 31st March 1948.

Increase in Rates in April 1948

The rates in G. S. T. R. 5 (4) are current rates operative from 1-4-1948. The prior rates are as hereunder:—

	If the turnover does not exceed Rs. 20,000 per annum. RS.	If the turnover exceeds Rs. 20,000 per annum. RS.
1. For dealing in bullion and/or specie ..	50	100
2. For dealing in cotton and/or handspun yarn	50	100
3. For dealing in hides and/or skins whether tanned or otherwise	10	20
4. For dealing as specified in section 8 ..	75	150

The benefit of free licence for cloth woven on handlooms wholly or partly with mill yarn was withdrawn from 1-4-48.

PART III—REBATES

9. Every person claiming a rebate under section (7) shall submit to the assessing authority an application in Form VIII within three months of the delivery of the articles outside the Province.

10. On receipt of the application, the assessing authority shall, after satisfying himself that the application is in order and that the rebate is admissible, send to the applicant a refund order for the amount

of the rebate due, if the tax has already been paid, or if the assessment has been provisionally made under rule 7 or 8 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, adjust the amount at the time of final assessment under rule 11 of those rules.

Comments on Rules 9 and 10.

The rules must be read with section 7 (*See Commentaries to section 7*)

PART IV—ACCOUNTS

11 Accounts maintained by dealers and licensees together with all vouchers relating to stocks, deliveries, purchases, output, and sales shall be preserved for a period of *two* years after the close of the year to which they relate. The vouchers of each kind shall be serially numbered separately.

12. (1) If the goods in which a dealer or a person licensed under section 8 deals include any of the articles specified in section 4 or 5 or *in a notification under section 6* in addition to any other articles, such dealer or person shall maintain separate accounts in respect of each class of articles specified in those sections.

(2) Dealers in hides or skins shall maintain separate accounts in respect of hides or skins tanned in the Province and of those tanned outside the Province.

(3) If a person who holds a licence under section 8 also deals otherwise than for an agreed commission or brokerage on behalf of known principals in the Province, he shall keep separate accounts in respect of such transactions and of transactions covered by the licence.

(4) Every dealer and every person licensed under the Act shall maintain accounts separately *in respect of different kinds of goods subject to different rates of tax under the Act.*

(5) *A person licensed under section 8 shall keep accounts in Forms X or XI or both, as the case may be, in addition to such accounts as may be necessary in the usual course of business.*

Comments on Rules 11 and 12.

See Comments on section 13, sections 4, 5 & 8 and "Duties of dealers and licensees" under "Analytical Study of the Taxation Law" Introduction.

PART V—APPEALS AND REVISION.

13. (1) Subject to the provisions of section 11, any person aggrieved by any original order of a licensing or assessing authority may appeal to the Commercial Tax Officer of the district.

(2) Every such appeal shall be preferred within 30 days of the receipt of the order appealed against.

(3) Every appeal shall be in writing, shall specify the name and address of the appellant, the date of the order appealed against, shall contain a clear statement of the facts and the nature of the relief prayed for and shall be signed and verified by the appellant in the form given below :—

“I,....., the appellant named in the above memorandum of appeal, do hereby declare that what is stated herein is true to the best of my knowledge and belief.”

(4) The memorandum of appeal shall be accompanied by the order appealed against in original or by an authenticated copy thereof unless the omission to produce such order or copy is explained to the satisfaction of the appellate authority, and by proof of payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable.

(5) The appeal may be sent to the appellate authority by post or may be presented to that authority or to such officer as the appellate authority may appoint in this behalf by the appellant or by his authorized agent or a legal practitioner.

(6) The appellate authority shall, after giving the appellant reasonable opportunity of being heard, pass such orders on the appeal as such authority thinks fit.

14. The following authorities may exercise the powers of the nature referred to in section 12 (1) :—

- (i) The Deputy Commissioner of Commercial Taxes, and
- (ii) The Commercial Tax Officer ;

Provided that the Deputy Commissioner of Commercial Taxes shall not revise an appellate order of a Commercial Tax Officer acting under section 11 in respect of cases involving a turnover exceeding Rs. 20,000.

14-A. Where the tax as determined by the initial assessing authority appears to the appellate or revising authority to be less than the correct amount of the tax payable by the dealer, the appellate or revising authority shall, before passing orders, determine the correct amount of tax payable by the dealer after issuing a notice to the dealer and after making such enquiry as such appellate or revising authority considers necessary.

15. (1) Every order of an appellate or revising authority shall be communicated to the appellant or petitioner, to every other party, affected by the order, to the licensing or assessing authority against whose order the appeal was filed and to any other authority concerned.

(2) The order passed on appeal or revision shall be given effect to by the licensing or assessing authority who shall refund any excess tax or fee found to have been collected and shall also have power to

collect any additional tax or fee which is found to be due, in the same manner as a tax or fee assessed by himself.

16. If the tax as determined in an appeal or revision is in excess of the powers of assessment of the initial assessing authority, the appellate or revising authority shall transfer the original records of assessment to the appropriate assessing authority who shall have power to collect the tax due in the same manner as if it were a tax assessed by himself.

Comments on Rules 13 to 16.

The rules must be read with *sections 11 and 12.* (See Commentaries to sections 11 and 12 and "Appellate and revisional tribunals under the Act" under "Analytical Study of the Taxation Law" Introduction) New Rule 14 (A) provides for power of enhancement by appellate or revisional authorities after notice to the dealer affected and after inquiry if necessary.

17. (1) If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority, as the case may be, may, at any time within the year or the two years next succeeding that to which the tax or licence fee relates, assess the tax payable on the turnover which has escaped assessment or levy the licence fee, after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

(2) If for any reason any tax or licence fee has been assessed at too low a rate in any year, the assessing authority or the licensing authority, as the case may be, may, at any time within the year or the two years next succeeding that to which the tax or licence fee relates, revise the assessment or the licence fee after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

(3) Notwithstanding anything contained in sub-rules (1) and (2)

(a) *the whole or any part of the turnover of a dealer or licensee which has escaped assessment to tax in the year 1945-46 shall not be assessed to tax after the 31st March 1947 ;*

(b) *any licence fee which has escaped levy in the year 1945-46 shall not be levied after the 31st March 1947; and*

(c) *any tax or licence fee which has been assessed or levied at too low a rate in the year 1945-46 shall not be enhanced after the 31st March 1947.*

(4) The assessing authority or the licensing authority, as the case may be, shall serve on the dealer or the licensee, a notice in Form B appended to the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, with such modifications as may be necessary, in respect of the tax or licence fee payable on any assessment or levy or revision of assessment or licence fee that may be made under this rule.

(5) If after an assessment has been made on a turnover not exceeding twenty thousand rupees, it is ascertained that part of the

turnover has escaped tax, and if with the addition of the turnover which has escaped assessment, the total turnover exceeds twenty thousand rupees, the assessing authority for the purposes of this rule shall be the Deputy Commercial Tax Officer.

Comments on Rule 17

This rule is framed under section 19(2) (f) and is analogous to section 34, Income-Tax Act. The period of one year as fixed under the Rule in 1939 was changed to 2 years by the Amending Act in 1947. Rule 17(3) is a transitional provision saving assessments, licence fee, etc., for the year 1945-46, from the operation of the new provision. See "Note on Transitional law for 1947-48" Introduction.

Object of the rule

Like section 34, Income-Tax Act, the object of this rule is to arm the authorities with necessary power to save the exchequer from any loss arising from negligence, and at the same time to protect the assessee against arbitrary use of powers by prescribing a time limit.¹

Mistakes remediable under Rule 18 can also be the subject matter of proceedings under Rule 17.²

Permissibility of re-opening—Reasons.

(Cases noticed below are cases under Income-Tax Act).

Any reason

"The words 'any reason' are very comprehensive and the rule is wider³ than Section 34, Income-Tax Act². On fresh facts coming to light it is undoubted that assessment can be reopened³.

The words "any reason" cover cases of inclusion of items in return which by oversight or any other cause are left unassessed and according to a decision of the Lahore High Court even to cases where due to some technical reason assessments are set aside in appeal or revision⁴. If due to inadvertence, or misapprehension or mistake⁵ there was escape in part or in whole the rule applies. Escape might have been due to permitting inadmissible deductions⁶ or error of judgment⁷ or a mistaken view of the law,⁸ or deliberately erroneous construction of the Act and rules⁹ or omission of authorities to assess a person with taxable turnover¹⁰ due to neglect or indifference or even as a result of the making of false and fraudulent returns by assessee¹¹. In fact, every case of non-assessment is covered by the words "any reason"⁴.

ESCAPED ASSESSMENT, MEANING OF.

The words 'escaped assessment' are not however to be construed as equivalent to "has not been assessed" or "escape from assessment" within the tax year. Thus,

1. A.I.R. 1938 Lah. 741.
2. A.I.R. 1939 Bom. 362.
3. A.I.R. 1930 Bom. 209.
A.I.R. 1938 Cal. 557.
A.I.R. 1938 P. C. 175.
A.I.R. 1936 Rang. 219.
A.I.R. 1938 Lah. 867.
1939 I.T.R. 362.
4. A.I.R. 1935 Lah. 742 (See how-
ever cases in foot-note 13.)
5. A.I.R. 1935 Lah. 361 and
742 (F.B).
A.I.R. 1930 Cal. 520.
6. (1942) I.T.R. 379 (1943). I.T.R.
491. Wrongly holding assessee joint

family and allowing high exemption,
Re-issue of notice under Sec. 34 valid
A.I.R. 1943 Bom. 132 (Wrong deduc-
tion for loss).

A.I.R. 1933 Cal. 777.

7. A.I.R. 1935 Lah. 361. A.I.R.
1931 Rang. 333. A.I.R. 1943 Bom.
132.

8. A.I.R. 1939 Bom. 362.

9. A.I.R. 1926 Mad. 287.

10. A.I.R. 1937 Bom. 214.
A.I.R. 1934 P.C. 30.

11. A.I.R. 1938 Sind 54.

it cannot be contended that merely because the assessment proceedings are not finished in a year, the turnover must be deemed to have escaped assessment¹². The Turnover Rules fix no time limit for finalisation. So, where proceedings for assessment are pending¹² or where a fresh assessment is made on a prior assessment being set aside¹³ by a higher authority as not having been made properly, the assessment cannot be said to have escaped, and it is not governed by the period of limitation fixed in the rules. Such assessment is only a continuation of the original assessment. It is not an escaped assessment.

Limitation

Re-assessment for escaped assessment must take place within the year or within two succeeding years (amended provision). The wording of the rule seems to show that mere service of notice within the succeeding years is insufficient, though under the Income-Tax Act, the wording of which is different, it is sufficient¹⁴. The year referred to is the financial year [See Section 2(j)] in which proceedings for assessment in respect of the turnover for that year should have been initiated¹⁵. Thus, for the year 1946-47, re-assessment under this rule must take place before the close of the financial year 1948-49. After the period fixed in the rule there can be no re-assessment of escaped turnover¹⁶. G. S. T. R. 17(3) is a transitional provision. Before the amendment of this rule (till 1st January 1948) the assessment, etc., for 1945-46 became final on 31st March 1947 as the period of one year fixed under the unamended rule had expired. The rule saves the assessment, etc., of 1945-46 from the operation of the extended period of limitation of two years fixed by the amended rule.

De novo examination

Though the wording of the rule is wide, it is not open to an authority to revise an assessment of his predecessor which has become final on the ground of disagreement with the latter's estimate¹⁷.

Where a portion of turnover is said to have escaped assessment *de novo* examination of the entire assessment is not justifiable¹⁸.

Who should act

The assessing authority or the licensing authority alone should act under this rule. He alone has knowledge of the first assessment or licence. In the first instance none else can act under the rule¹⁹ and the Commercial Tax Officer can at best only instruct the original authority to act. So even a revisional authority cannot in the first instance act exercising powers under G. S. T. R. 14. If however the original authority makes a mistake or fails to re-assess after initiating proceedings and serving necessary notice, the proceedings being open to revision the revisional authority can exercise jurisdiction and act²⁰.

Materials for acting

He cannot act on mere surmise²¹ or on conjectures²². If the authorities do not misdirect themselves and there are materials on which they could come to

12. A.I.R. 1931 Cal. 545 (S.B.)

13. A.I.R. 1934 P.C. 30. A.I.R. 1934 Cal. 515. See also A.I.R. 1935 Lah. 742 (F.B.).

14. A.I.R. 1934 Cal. 515. A.I.R. 1932 Cal. 545. See however A.I.R. 1942 All. 295 (where proceedings declared void—Section 34 applied). See also A.I.R. 1938 P.C. 8.

15. A.I.R. 1931 Rang. 101. This case under Income Tax Act inapplicable.

16. A.I.R. 1934 Cal. 515.

17. A.I.R. 1927 Lah. 248. A.I.R. 1929 All. 919. A.I.R. 1939 P.C. 175.

18. A.I.R. 1933 Rang. 350 (B).

See however cases under footnotes 4 and 7, etc.

19. A.I.R. 1931 Rang. 333 and A.I.R. 1938 Lah. 741.

20. A.I.R. 1938 Cal. 557.
A.I.R. 1943 Bom. 927.

21. A.I.R. 1928 Mad. 257. A.I.R. 1943 Bom. 297.

22. A.I.R. 1936 Rang. 219 (S.B.).

A.I.R. 1938 Cal. 557 (S.B.).

the conclusion about escapement, the proceeding is not liable to be set aside by the Civil Court the question being one of fact within the competence of the assessing authority²³. There is no need to prove by admissible evidence before taking action, that there has been escapement²⁴. To be enabled to initiate proceeding, it is sufficient that the assessing authority on information he has before him, in good faith considers that there are good grounds for believing that there has been escapement²⁵.

Notice

Before *deciding* on proceedings no notice to dealer or licensee is necessary and the authority need not at that stage indicate the nature of the escapement and give an opportunity of being heard²⁶. But on *initiating* proceedings notice to dealer or licensee is mandatory²⁶.

Form and contents of notice

Form B must be used with necessary modifications. [(See Clause (4).] A letter containing necessary details was held sufficient in a case under the Income-Tax Act²⁷. The notice must sufficiently draw the attention of the party to the case he has to meet. The total sum believed to have escaped need not be specified²⁸.

Continuation of Proceedings

If a person on whom notice is served dies or if some other person has succeeded to business after service of notice under this rule, no fresh notice is needed²⁹.

Procedure

Assessment procedure is assimilated to escapement procedure. (See Section 9). On failure to produce accounts or materials there may be assessment to best of judgment³⁰.

Powers of assessing authorities

See section 9 and "Powers and Duties of Officers" under "Analytical Study of the Taxation Law" Introduction.

Inquiry Appeal and Revision

Power of inquiry is specifically mentioned in the rule. See Sections 11 and 12. For "Powers and Duties of Appellate and Revisional Authorities," See under "Analytical Study of the Taxation Law," Introduction.

Forms :—See Sub-rule 4.

18. (1) An assessing, appellate or revising authority may, at any time within *two* years from the date of any order passed by him, rectify any mistake apparent from the record.

Provided that no such rectification which has the effect of enhancing the assessment shall be made unless the assessing authority has given notice to the dealer of his intention to do so and has allowed him a reasonable opportunity of being heard.

23. A.I.R. 1936 Rang. 219 (S.B.).

24. 1942 I.T.R. 79. A.I.R. 1940 P.C. 124.

25. A.I.R. 1940 P.C. 124. 1942 I.T.R. 79. 1941 I.T.R. 618.

26. A.I.R. 1928 Mad. 257. A.I.R. 1936 Lah. 897.

27. Letter held sufficient. A.I.R. 1934 Cal. 515. A.I.R.

1943 Bom. 102.

28. 1942 I.T.R. 435.

A.I.R. 1943 Bom. 132. Source of Income that has escaped need not be specified.

29. A.I.R. 1934 Mad. 63.

A.I.R. 1937 Lah. 830.

30. 34 C.W.N. 1093 (F.B.).

(2) Where such rectification has the effect of reducing the assessment the assessing authority shall make any refund which may be due to the dealer.

(3) Where any such rectification has the effect of enhancing the assessment, the assessing authority shall serve on the dealer a revised notice in Form B appended to the Madras General Sales Tax (Turn-over and Assessment) Rules, 1939, and thereupon the provisions of the Act, the said rules and these rules, shall apply as if such notice had been served in the first instance.

(4) *Notwithstanding anything contained in sub-rule (1) rectification of any mistake apparent from the record relating to the year ending 31st March 1946 shall not be made after the 31st March 1947 under the said sub-rule.*

Comments on Rule 18.

This rule is framed under section 19 (2) (g)

The power of rectification is to be exercised by the authority that passed the prior order. Thus, the assessing authority may rectify the mistake in the order of assessment and the appellate and the revisional authority may rectify the mistake in appellate and revisional orders respectively.

Mistake, meaning of

From 1st January the period of limitation has been extended to two years. The period fixed before the amendment to the rule was only one year. The principle of Clause (4) which is a transitional provision is this : Under the unamended rule assessment, etc., for 1945-46 had become final as the period of limitation fixed had expired. This sub-rule saves the assessment, etc., from the operation of the new rule which extends the limitation to two years.

Mistake means a slip made not designedly but by forgetfulness or mischance.¹ The rule covers only *bona fide* mistakes as to the manner in which assessments should be made.²

A case decided under Section 35, Income-Tax Act, illustrates what a 'mistake' is for the purpose of the Income-Tax Act and for the purpose of this rule as well. A person who was really the owner of five concerns deliberately submitted returns separately for the five concerns as though the concerns belonged to different persons. But when the real fact was known to the authorities who proceeded to assess all the concerns together, the assessee applied for reduction of assessment pleading that there was a mistake and that another concern had sustained much loss. It was held that there was no mistake at all, much less a mistake apparent on the record as the act of assessee was deliberate.²

Collection of tax at a low rate e.g., 0-1-0 instead of 0-1-3 was held to be a mistake apparent from the record.³

Rules 17 & 18 not mutually exclusive

Rules 17 and 18 not being mutually exclusive, even in respect of mistake remediable by rule 18, proceedings can be taken under rule 17.⁴

Reopening.—Until the expiry of the period fixed for alteration or rectification an assessment cannot be said to be final and within the limits allowed by the two rules, the assessment can be altered.⁵

1. 65 L.J.Q.B. 74 (1899) 2 Q.B. 273.

2. A.I.R. 1925 Pat. 352.

3. A.I.R. 1927 Lah. 421.

4. A.I.R. 1939 Bom. 362.

5. A.I.R. 1938 P.C. 175.

A.I.R. 1939 Bom. 362.

After the expiry of the period fixed the original or even the revising authority cannot reopen and correct or rectify the assessment. G.S.T.R. 14 must be read subject to rules 17 and 18. ⁶

Rectification by enhancement without notice is *ultra vires*. ⁷

Powers of Appellate and Revisional Authorities. See under "Analytical Study of the Taxation Law" Introduction.

Effect of revised notice.—All the provisions relating to collection (Section 10) and effect of failure to pay (offence under Section 15) operate.

Rectification and Finalisation.—Finalisation of a provisional assessment is different from rectification of a final assessment. Note that there is no period fixed for finalisation of assessment. ⁸

Appeal and Revision.—Appeal and Revision lie against rectification.

PART VI—MISCELLANEOUS.

19. If a dealer or licensee enters into partnership in regard to his business, he shall report the fact to the assessing authority within 30 days of his entering into such partnership. The dealer or licensee and the partner shall jointly and severally be responsible for the payment of the tax leviable under the Act.

20. If a partnership is dissolved, every person who was a partner shall send a report of the dissolution to the assessing authority within 30 days of such dissolution.

21. If the business carried on by any dealer or licensee is discontinued, the dealer or licensee or, if he is dead, the legal representative shall notify to the assessing authority the fact of discontinuance of the business within one month of the discontinuance.

Comments on Rules 19 to 21.

The rules are framed under section 19(2) (e).

If the officers are not notified, under rules 20 or 21 there is a risk of assessing authority holding that the business continues and taxes and licence fees may have to be continually paid. Failure to notify is an offence See G.S.T.R. 32. Dissolution of partnership may be, by agreement (Section 40, Partnership Act) or by reason of expiry of term fixed, or completion of undertaking for which firm was started, or by death of partner, or by the adjudication of a partner as insolvent (section 42) or by the giving of notice by a partner if partnership is at will (see section 43). A partnership may be dissolved by Court for sufficient cause (section 44).

Rules 19 to 21 provide for intimation in case of (i) entering into partnership, and (ii) dissolution of partnership, and (iii) discontinuance of business. But when a person who was not previously carrying on business is taken into an existing partnership, there is no specific provision for notifying. But it is safe to notify.

Discontinuance.—Discontinuance means complete cessation. More absence of business for sometime or the existence of some period of inactivity does not affect the question ⁹. If a business carried on by A & B is continued by B, A going out of it, it is not discontinuance. ¹⁰ But if on the business being stopped,

⁶ 6. A.I.R. 1938 P.C. 175. A.I.R. 1927 Lah. 421 and A.I.R. 1927 Lah. 428. But A.I.R. 1928 Mad. 257 not correct.

7. A.I.R. 1929 Lah. 326.

8. 1947 (1) M.L.J. Short Notes 14 Case under the present Act.

9. A.I.R. 1936 Mad. 267.

10. A.I.R. 1941 Mad. 255.

a new business is started without taking over the assets and liabilities of the old firm, it is a discontinuance of the old firm. ¹¹ The tax payable by firm prior to discontinuance can be demanded from the partners jointly and severally. ¹²

Tax liability.—Joint and several liability of partners for tax *See* 1947 (2) MLJ. 255.

22. In the case of any guardian, trustee or agent of any minor or other incapacitated person carrying on a business on behalf of and for the benefit of such minor or other incapacitated person, the tax shall be levied upon and recoverable from such guardian, trustee or agent as the case may be, in like manner and to the same extent as it would be leviable upon and recoverable from any such minor or other incapacitated person, if he were of full age or sound mind and if he were conducting the business himself; and all the provisions of the Act and the rules made thereunder shall apply accordingly.

23. In the case of business owned by a dealer whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator-General, the Official Trustee or any Receiver or Manager (including any person whatever his designation, who in fact manages the business on behalf of the dealer) appointed by, or under any order of a court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, Receiver or Manager in like manner and on the same terms as it would be leviable upon and recoverable from the dealer if he were conducting the business himself; and all the provisions of the Act and the rules made thereunder shall apply accordingly.

Comments on Rules 22 to 23.

The rules are framed under Section 19 (2) (d) and (e). The provisions relating to levy assessment and collection of tax is made applicable to beneficiaries (minors, incapacitated persons, etc.) whose representatives (trustees, agents, etc.) are brought within the tax system on behalf of the estate.

The representatives are not strictly dealers except for the purpose of levy and collection of tax.

Incapacitated persons.—Minors, lunatics and idiots are incapacitated persons in the eye of law since they have not the capacity to contract. If business is carried on their behalf the persons in management, *e.g.*, trustee etc., are made liable.

Control of Court of Wards. ¹—Under Section 9 of the Madras Court of Wards Act (1 of 1902) the Collector of the District may in certain cases take steps for the immediate protection of the property of a disqualified heir.

Control by the Administrator-General. ¹—Section 9 of the Administrator-General's Act (3 of 1913) provides for administration by the Administrator-General of estates of persons other than persons exempted under that Act, if no person trustee as applied for probate or letters of administration of the estate of the deceased.

Control by the Official Trustee. ¹—Under Sections 8 and 9 of the Official Trustees Act (2 of 1913) an Official Trustee may be appointed trustee of property

11 (1942) I.T.R. 533, (1944) I.T.R. 367.

(1946) I.T.R. 534.

12. A.I.R. 1937 Mad. 300.

1. *See* Sections 40 to 42. Income Tax Act.

by a person in a settlement or in a will, or the High Court may appoint an Official Trustee, as trustee of property under section 10 of that Act.

Manager or Receiver appointed by Court. ¹—The reference is to appointment of receivers by Courts in suits under Order 40, Rule I, C.P.C. or to receivers appointed under section 44 of Specific Relief Act as part of the relief prayed for in the suit².

24. An assessing or licensing authority may require any person whose evidence he considers necessary for the purpose of any enquiry under the Act, or the rules made thereunder to appear before him and give evidence

Any assessing or licensing authority may examine such person on oath or affirmation.

25. An assessing or licensing authority shall have all the powers conferred on a court by the Code of Civil Procedure, 1908, for the purpose of securing the attendance of persons or the production of documents.

26. The assessing or licensing authority shall issue a summons for the production of a document or the appearance of any person in Form IX.

27. The powers conferred on an assessing or licensing authority by rules 24 to 26 may also be exercised by an appellate or revising authority.

27-A. A person appearing before a licensing, assessing, appellate or revising authority to give evidence in an enquiry under the Act or the rules made thereunder shall be paid travelling allowance and batta at such rates as may be fixed by the Provincial Government from time to time.

Comments on T. R. 24 to 27-A

The rules are framed under Sec. 19(2) (h).

Oath or affirmation.—Oath is an appeal to God to witness the truth of a statement made. An affirmation is a declaration without oath. The latter is allowed to be made in the case of certain religionists who object to take oath (*e.g.*, Hindus and Mahomedans¹).

Procedure, powers and privileges of Courts get attracted to proceedings under the Act. The Original Appellate and Revisional authorities have powers to summon persons and documents and compel such attendance or production.

It is not clear whether proof of facts by affidavits is permissible^{1-A}.

The authority exercising powers must conform to elementary rules of Judicial procedure, and conduct the case himself and not be dictated to, since he is a *quasi judicial* authority.²

Person summoned may be exempt from arrest, since the taxing authority is a tribunal under Section 135(2) C.P. Code³.

2. See A.I.R. 1939 P.C. 163. Need for appointment by Court.

1. Sec. 5 and 6 oaths Act.

1A. The Central Provinces Sales-tax Act contains such provision.

2. A.I.R. 1943 Bom. 77.

3. A.I.R. 1933 Lah. 214.

Assessing and licensing authorities.—*See* Section 2 (a-1) Notification II and G.S.T.R. 5. *See* “Assessment” “Licensing” under “Analytical Study of the Taxation Law” Introduction.

Summoning.—*See* Order XVI and Order V and Sections 27 to 31. C. P. Code.

Summons for Examination and duty to comply.—*See* XVI Rules 1 and 15 C.P.C.

Summons for production of document only, and duty to comply.—*See* Order XVI, Rules 1, 6 and 15, C. P. Code.

Person present being compellable to produce document or give evidence.—*See* Order XVI, Rule 7, C.P. Code.

Failure to comply and consequent issue of proclamation and attachment.—*See* Order XVI, Rule 10 C.P. Code.

Withdrawal of proclamation on compliance.—*See* Order XVI Rule 11.

Continued default, effect of.—*Fining, and realisation of fine by sale of attached property.* *See* Order XVI, Rule 12 and Section 32 C.P.C.

Authorities whether Court or public servant

The authorities are public servants. Whether they are Courts and whether offences in Chapter X & XI Penal Code, apply.—*See* Commentaries to Section 15.

Commission

The power of issuing commissions is not available. The provision here is unlike the corresponding provision of the Income-tax Act (Section 37 of that Act) ¹-A.

Banker's Books Evidence

Procedure prescribed in Banker's Books Evidence Act, 1891, can be followed and by issue of summonses, Banks can be made to disclose the contents of the books with reference to their constituents.

28. The service on a dealer or licensee of any notice, summons or order under the Act or the rules made thereunder may be effected in any of the following ways, namely ;

(a) by giving or tendering it to such dealer or licensee or his manager or agent ; or

(b) if such dealer or licensee or his manager or agent is not found, by leaving it at his last known place of business or residence or by giving or tendering it to some adult member of his family ; or

(c) if the address of such dealer or licensee is known to the assessing authority, by sending it to him by registered post ; or

(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence.

Comments on Rule 28

The rule sets out the mode of service.

(a) **Manager or Agent.**—(C. P. Order 5, Rule 13, C.P.C.)

“The manager or agent contemplated by the rule is one who has an initiative and independent discretion. A mere servant simply employed to

do a particular work. . . . is not an agent or manager within the meaning of the rule."¹

(b) is not found.—(Op. Order 5, Rules 15 and 17)

It is not clear whether these words have the same meaning as the words "cannot be found" used in Order 5, Rule 15 and 17, C.P. Code, or whether the words cover even temporary absence of assessee or licensee or manager. A proper view seems to be to hold that before clause (b) is invoked, all reasonable attempts should be made to effect service as contemplated in clause (a).²

(c) Registered post. Clause 27, General Clauses Act, also provides for service by such post.

(d) Affixing. The operation of this clause can arise only if the other modes are not practicable. Affixing must be in conspicuous place. Leaving summons in a teapoy in an assessee's house is insufficient.³ Similarly, affixing at a place where an assessee never resided or carried on business is insufficient.

Delivery to minor.—Delivery of notice on minor son of assessee was held valid especially when on previous occasions the minor son had received notice.⁴

Notice.—See Forms, A2, B, B1, B2 & C under T.R. 10, 11, 12 and 13 for dealers and licensees. There is no provision in the Act and rules which requires service of notice personally on the person proceeded against. For instance, in the case of a firm when notice is served on a partner all other partners can be proceeded against under the Act since service of notice on one partner is sufficient service on all partners composing it.⁵

Summons.—See Form IX and G.S.T.R. 26.

Orders of original, appellate and revisional authorities.—See T.R. 14 and G.S.T.R. 15.

Absence of notice—effect.—Where notice is a condition precedent, its absence would invalidate the entire proceedings.⁶

Adjournment. Letter intimating adjourned date is merely an act of consideration. Being not dictated by terms of statute, even its omission will not entail any legal consequence.⁷ It need not be sent by registered post to absent party.⁷

29. The following authorities may exercise the powers specified in section 16 :—

(a) The Assistant Commercial Tax Officer, Deputy Commercial Tax Officer subject to the control and direction of the Commercial Tax Officer, the Deputy Commissioner of Commercial Taxes and the Board of Revenue ; and

(b) The Commercial Tax Officer subject to the control and direction of the Deputy Commissioner of Commercial Taxes, and the Board of Revenue.

1. *Chitale's C.P. Code*. Volume II.
2. 19 Cal. 201. (Case under C.P. Code)
3. A.I.R. 1929 Bom. 257. (Case under C.P. Code)
4. A.I.R. 1922, All. 374. (Case under Income-Tax Act)

5. 1947 (2) M.L.J. 255. (Case under present Act)

6. 34 Cal. 470.

A.I.R. 1930 Mad. 836 (Case under Land Acquisition Act)

7. A.I.R. 1930 Mad. 113.

Comments on Rule 29

This rule must be read with Section 16.

30. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of the Act or of the rules made thereunder, or in any evidence given or affidavit or deposition made, in the course of any proceeding under the Act or the rules made thereunder, or in any record of any proceeding relating to the recovery of a demand, prepared for the purpose of the Act or the rules made thereunder, shall be treated as confidential and the illegal disclosure of such particulars by any officer shall be dealt with severely.

(2) Nothing in sub-rule (1) shall apply to the disclosure—

(i) of any such particulars for the purpose of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition or for the purpose of the Act or the rules made thereunder, or

(ii) of any such particulars to any person acting in the execution of the Act or the rules made thereunder where it is necessary to disclose the same to him for the purposes of the Act or the rules made thereunder, or

(iii) of any such particulars occasioned by the lawful employment under the Act or the rules made thereunder of any process for the recovery of any demand, or

(iv) of any such particulars to a civil court in any suit to which the Government are a party, which relates to any matter arising out of any proceeding under the Act or the rules made thereunder, or

(v) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document.

Comments on Rule 30

The rule must be read with section 19 (2) (f)

The rule is similar to section 54, Income-Tax Act.

The object of the rule is to keep statements confidential as between the assessee and the department and against the whole world except for the limited purposes mentioned in this rule. The rule is intended to encourage assesses to make a full and free disclosure of all facts.¹ A Court cannot therefore order a party at the instance of the other party to obtain certified copies of statements and returns and file them. That would be evasion of the prohibition contained in the section.² But the documents are not rendered inadmissible in evidence if otherwise they get into Court. The prohibition is only against the taxing authorities disclosing these matters coming within their purview.³ Further the assessee can always waive the privilege.⁴ He may himself produce the documents or consent to their production by the opposite party, and this rule is not infringed thereby.⁵

1. A.I.R. 1934 Nag. 181.

2. A.I.R. 1938 Ban. 276.

A.I.R. 1942 Mad. 276.

A.I.R. 1941 Mad. 709.

3. A.I.R. 1942 Bom. 289.

4. A.I.R. 1944 All. 114.

5. A.I.R. 1940 Mad. 766.

A.I.R. 1946 Nag. 377.

The return submitted by an assessee, the order of assessment, the statement recorded by the taxing officer and even a statement prepared by the assessee as required by the officer in conformity with this Act are all Public documents in respect of which copies can be obtained⁶ by the assessee. Since what is prohibited is only a disclosure to a third party or stranger,⁷ such certified copies can be used by the party assessee.

Even disclosure to Income-Tax authorities is not permissible.⁷

31. Where any payment by cheque is permitted by rules made under the Act, the cheque shall be such as under the Madras Treasury Code is receivable by the Government Treasury concerned.

Comments on Rule 31

This rule must be read with section 10 and rules 13 and 15 of Turnover Rules which provide for payment by cheque.

32. Whoever commits a breach of any of the following rules, namely, rules 6 (9), 6 (10), 11, 12, 19, 20 and 21 shall, on conviction by a Presidency Magistrate or a Magistrate of the First Class, be punishable with fine which may extend to one thousand rupees.

Comments on Rule 32

The rule must be read with section 19 (3) and section 15.

See Commentary in section 15.

33. Where a form has been prescribed by the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, or these rules for the keeping or maintaining of any accounts or for the submission of any return, only the appropriate form printed under the authority of the Provincial Government shall be used for the purpose.

34. The forms prescribed in this rules or in the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, may be used with such variations in matters of detail as may be directed by the Board of Revenue from time to time.

Comments on Rules 33 and 34

The rules make it obligatory to use the form prescribed in respect of maintenance of accounts and the submission of returns and the use of the forms with necessary variations. See forms of account X and XI and forms of return VI and VII. A3 to A5.

6. A.I.R. 1940 Mad. 768.

Unlike Section 54, Income-Tax Act, the rule contains no prohibition to the Court against summoning an officer to produce the assessment paper.

A.I.R. 1939 Madras 546.

Effect of prohibition in Income-Tax Act discussed.

7. To safeguard against evasion of Central and Provincial Taxes, it is necessary that this rule and the corresponding provision in Sec. 54, Income-Tax Act, be amended so as to permit of mutual exchange of assessment records and information relating to them. In fact the Cochin Sales Tax Act contains such provision.

FORM I

Application for licence

[See rules 5 and 6 (2)]

To

The Licencing Authority.

Sir,

I/We _____ residing at _____ taluk
 district, request that I/we may be granted a licence (or my/our licence
 No. _____ dated _____ may be renewed) for the year ending
 the 31st March 194 —

(a) for dealing in bullion and/or specie
cotton and/or handspun yarn other than
handspun yarn and/or handspun yarn
cloth woven on handlooms wholly with
handspun yarn
cloth woven on handlooms wholly or
partly with mill yarn
hides and/or skins whether as a tanner or
otherwise

or

(b) for buying and selling goods for an agreed commission or
 brokerage on behalf of persons (including firms) in the province.

2. I/We desire to carry on business at the shandies in the following
 places in the neighbourhood of my/our place of business mentioned in
 item 4 :—

Name of the place where
 the shandy is held.

Distance from
 place of business.

3. I/We enclose a treasury receipt
cheque for Rs. _____ (in words)
 only being the fee for the licence.

4. My/Our turnover
estimated turnover for the year* was
is Rs. _____
 (in words) only.

5. A description of my/our _____ place of
principal place of business and the place
business
of business of each of the branches is given below :

6. In addition to the business for which licence is applied for I
we
 deal in the following goods.

Signature of applicant(s).

* Note.—(1) The turnover for the year immediately preceding the year for
 which application is made should be furnished.

(2) In the case of new businesses estimated turnover for twelve months should be given.

(3) The turnover entered in item 4 should relate only the dealings in respect of which licence is applied for.

(4) An applicant for a licence for dealing in cloth woven on handlooms must append a declaration as follows :—

“ I hereby declare that I deal exclusively in cloth woven on handlooms wholly with handspun yarn.”

Note—Where payment is made by cheque, the cheque should be such as under the Madras Treasury Code is receivable by the Government treasury concerned.

FORM II [AS AMENDED]

Licence to a dealer in bullion and/or specie

[See rule 6 (5)]

Licence No. _____

, dated _____

having paid a licence fee of Rs. _____ (in words)
only is hereby licensed as a dealer in bullion and/or specie for the year
ending _____ at _____ (place of business)
subject to the provisions of the Madras General Sales Tax Act, 1939,
and the rules made thereunder and to the following conditions :—

(1) This licence extends only to dealings in bullion and/or specie and not to ornaments or other finished articles of precious metal.

(2) Licensees who do submit returns under rule 11 or 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, shall submit to the undersigned on or before the 20th day of June in every year a return in Form VII showing the turnover of all the business done by them for the preceding year.

(3) Licensees shall keep accounts showing the names and addresses of the persons from whom they bought or to whom they sold bullion and/or specie.

(4) No correction in this licence shall be valid unless ordered and attested by the undersigned.

Turnover as determined by the Licensing authority :

Place.....

Date.....

Licensing Authority.

Renewal of the Licence

Date of renewal.	Year for which renewed.	Turnover as determined by the Licensing Authority.	Signature of the Licensing Authority.
(1)	(2)	(3)	(4)

FORM III [AS AMENDED]

cotton
cotton yarn other than handspun yarn
handspun yarn

Licence to a dealer in cloth woven on handlooms wholly with handspun yarn
cloth woven on handlooms wholly or partly with mill yarn

[See rule 6 (5).]

Licence No. _____, dated _____
 having paid a licence fee of Rs _____ (in words)

cotton
cotton yarn other than handspun yarn
handspun yarn

only is hereby licensed as a _____
 dealer in cloth woven on handlooms wholly with handspun yarn
cloth woven on handlooms wholly or partly with mill yarn

for the year ending _____ at _____ (place of business including the shandies at
) subject to the provisions of the Madras General Sales Tax Act, 1939,
 and the rules made thereunder and to the following conditions :—

(1) Licensees who do not submit returns under rule 11 or 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, shall submit to the undersigned on or before the 20th day of June in every year a return in Form VII showing the turnover of all the business done by them for the preceding year.

(2) In the case of handspun yarn and cloth woven on handlooms wholly or partly with mill yarn, the licensees shall keep accounts showing the names and addresses of the persons from whom they bought and to whom they sold the yarn or the cloth, as the case may be.

(3) No correction in this licence shall be valid unless ordered and attested by the undersigned.

Turnover as determined by the Licensing Authority.

Place.....

Date.....

Licensing Authority.

Renewal of the licence

Date of renewal.	Year for which renewed.	Turnover as determined by the Licensing Authority.	Signature of the Licensing Authority.
(1)	(2)	(3)	(4)

FORM IV

Licence to a dealer in hides and skins whether as a tanner or otherwise.

[See rule 6 (5)]

Licence No. _____ dated, _____
 having paid a licence fee of Rs. _____ (in words)
 only is hereby licensed as a dealer in hides and skins, whether as a
 tanner or otherwise for the year ending _____
 at _____ (place of business) subject to the provisions of the
 Madras General Sales Tax Act, 1939, and the rules made thereunder.

Licensees shall keep accounts showing the names and addresses
 of the persons from whom they bought or to whom they sold the goods.

No correction in this licence shall be valid unless ordered and
 attested by the undersigned.

Turnover as determined by the Licensing Authority.

Place.....

Date..... *Licensing Authority.*

Renewal of the licence

Date of renewal.	Year for which renewed.	Turnover as determined by the Licensing Authority.	Signature of the Licensing Authority.
(1)	(2)	(3)	(4)

FORM V [AS AMENDED]

Licence under section 8 of the Madras General Sales Tax Act, 1939.

[See rule 6 (5)]

Licence No. --, dated _____
 having his place of business at _____
 and having paid a licence fee of Rs. _____ (in words) only is and hereby
 licensed under section 8 of the Madras General Sales Tax Act, 1939,
 subject to the provisions of the said Act and the rules made thereunder
 and to the following conditions :—

(1) No correction in this licence shall be valid unless ordered
 and attested by the undersigned.

(2) The licensee shall submit to the undersigned on or before
 the first day of May a return in Form VI for the year ending 31st March.

(3) The licensee shall be exempt from the tax payable under section 3, sub-sections (1) and (2), only in respect of the transactions in which the amounts for which the goods are bought or sold are included in the turnover of the principals or of the dealers from whom the purchases were made or would have been so included but for an exemption provided for under the Act.

(4) This licence shall not apply to the transactions of the licensee otherwise than for an agreed commission or brokerage on behalf of known principals (including firms) in the Province specified in his accounts in respect of each transaction or to the transactions of the licensee on behalf of non-residents.

(5) The agreed commission or brokerage specified in the accounts shall be the entire remuneration of the agent and each legitimate incidental charge actually incurred by him in respect of insurance, transport, loading and unloading, godown rent, interest, correspondence, telegrams, the use of the telephone and the like shall be specified in the accounts separately.

(6) The licensee shall prove before the licensing authority with necessary evidence that a transaction is exempt by virtue of this licence from the tax or taxes payable under section 3.

(7) Without prejudice to the generality of the foregoing conditions, every licensee shall, in particular—

(a) If the transaction be one claimed as buying of goods on behalf of principals as specified in section 8.

(i) Produce before the licensing authority the order in writing from the principal, authorising him to buy the goods for agreed commission or brokerage.

(ii) Prove before the licensing authority the date of receipt by him of the said order,

(iii) Specify in the accounts with reference to the said order, the person from whom and the date on which the goods were bought, the quantity so bought and the appropriation of the goods so bought on the date on which they were bought,

(iv) Prove before the licensing authority by vouchers that he incurred the legitimate incidental charges referred to in condition 5; and that the commission or brokerage (the entire remuneration of the licensee) was agreed upon as commission or brokerage,

(v) render a truthful account to the principal in Form X, and

(vi) keep and produce before the licensing authority a mechanically duplicated copy of the account so rendered;

(b) If the transaction be one claimed as selling of goods on behalf of principals as specified in section 8,

(i) specify in his accounts the date on which he received the goods from the principal for sale for agreed commission or brokerage and the quantity so received and produce evidence of the date, the quantity and the order in writing from the principal authorising him to sell the goods for the agreed commission or brokerage,

(ii) specify in his accounts the date on which and the person to whom the goods or portions thereof were sold in each transaction, mentioning the quantity so sold,

(iii) specify in his accounts the name and address of the person or persons to whose account or accounts the amount realized by each transaction of sale was credited,

(iv) prove before the licensing authority, by vouchers that he incurred the legitimate incidental charges referred to in condition 5 and that the commission or brokerage (the entire remuneration of the licensee) was agreed upon as commission or brokerage.

(v) render a truthful account to the principal in Form XI, and

(vi) keep and produce before the licensing authority a mechanically duplicated copy of the account so rendered.

(8) The licensee shall obtain bills for purchases or issue serially numbered bills for sales and keep and produce them or copies thereof, as the case may be. Such bills shall specify also the names and addresses of the persons from whom the purchases were made or to whom the sales were made.

(9) If in respect of one and the same transaction, the licensee had bought or sold the goods on behalf of more than one principal, he shall not be exempt from the tax payable under section 3 in respect of such portion of the transaction relating to the principal or principals, as the case may be, as does not comply with the provisions of section 8 and the conditions and restrictions herein contained.

Turnover as determined by the Licensing Authority.

Place.....

Date....

Licensing Authority.

Renewal of the licence

Date of renewal.	Year for which renewed.	Turnover as determined by the Licensing Authority.	Signature of the Licensing Authority.
(1)	(2)	(3)	(4)

FORM VI [AS AMENDED]

*Return to be submitted by a person licensed under section 8
of the Madras General Sales Tax Act, 1939*

[See rule 6 (9)]

Name(s) of the licensee(s)—

Place of business—

Licence No. , dated

1. During the year ending 31st March 19 . I/we have acted as—

(a) Selling agent(s) for the principals mentioned in the annexed statement.

Total amount for which sales were effected—

(b) buying agent(s) in

groundnut
cashew
untanned hides and or skins

 for the principals mentioned in the statement annexed.

Total amount for which purchases were made—

(c) buying agent(s) in respect of other articles for the principals mentioned in the statement annexed.

Total amount for which purchases were made—

Grand total under (a), (b) and (c)—

A statement in the form annexed detailing the transactions under (a), (b) and (c) is appended.

2. The amount for which I/we sold goods under (a) or bought goods under (b) or (c) of paragraph 1 on behalf of principals resident outside the Province is as follows :—

(a) Rs.

(b) Rs.

(c) Rs.

Signature of licensee(s).

Note 1.—The turnover of transactions carried out on behalf of principals resident outside the Province should be included in a return in Form A, A-1 or A-3 as the case may be under the Madras General Sales Tax (Turnover and Assessment) Rules.

Note 2.—If any of the transactions included in paragraph 2 above relate to hides and skins or to articles exempted from taxation under the Act, the turnover of such articles should be shown separately in respect of each class of such articles.

ANNEXURE

Serial number.	Name of the principal with the address of his place of business.	Total amount for which goods were sold during the year under paragraph 1 (a) on behalf of the principal in column (2).	Total amount for which goods were bought during the year under paragraph 1 (b) on behalf of the principal in column (2).
(1)	(2)	(3)	(4)
Total amount for which goods were bought during the year under paragraph 1 (c) on behalf of the principal in column (2).	Amounts taken by the licensee towards commission and other items mentioned in the accounts from the amount in column (3).	Amounts received from the principal in column (2) towards commission and other items mentioned in the accounts in addition to the amounts specified in column (4) or column (5) in respect of transactions included in para. 1 (b) or 1 (c).	Remarks.
(5)	(6)	(7)	(8)

Signature of licensee(s).

FORM VII.

Annual return submitted by licensees other than dealers in hides and skins.

[See rule 6 (10)]

Name (s) of the licensee(s)—

Place of business—

Licence No. , dated

During the year ending 31st March... the turnover of my/our business has been as follows:—

1. Transactions covered by the licence—	RS. A. P.
(i) Bullion and/or specie	
(ii) Cotton	
(iii) Cotton yarn other than handspun yarn ..	
(iv) Handspun yarn	
(v) Cloth woven on handlooms wholly with handspun yarn	
(vi) Agency business	
(vii) Cloth woven on handlooms wholly or partly with mill yarn	
2. Business not covered by the licence	
Total	

I/We declare that to the best of my/our knowledge and belief the information furnished in the above return is true and complete and that it relates to the year ending 31st March.

Signature of licensee(s).

Note.—The turnover at the place of business should include the turnover at the shandies, if any, covered by the licence.

FORM VIII

*Application for rebate under section 7 of the
Madras General Sales Tax Act, 1939.*

[See rule 9]

I/We residing at taluk
district request that I/we may be granted a rebate of tax under section
7 of the Madras General Sales Tax Act, 1939, in respect of the sale of
goods specified below :—

1. Name(s) and postal address(es) of applicant(s).
2. Nature and description of articles sold.
3. Aggregate amount for which sold.
4. Name(s) and address(es) of person(s) to whom sold.
5. In the case of assesseees under rule 13 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, the month in which the amount under item 3 was included in the return of turnover.

Declaration

I/We declare that to the best of my/our knowledge and belief the information furnished in the above statement is true and complete and that it relates to the month of

Place.

Date.

Signature of applicant(s).

FORM IX

*Form of summons under the Madras General Sales Tax Act, 1939
(Madras Act IX of 1939).*

[See rule 26]

Summons to appear in person and/or to produce documents.

To

Whereas your attendance is necessary

Whereas the following documents (here describe the document
to give evidence

in sufficient detail to permit of their identification with reasonable
certainty) are required

with reference to an inquiry under the Madras General Sales Tax
Act, 1939 (here enter briefly the subject of the inquiry) now pending
before me, you are hereby summoned to appear

in person to produce, or cause to be
produced, the said documents before me on the day of
19 , at o'clock at (place) (and not to depart thence
until permitted by me).*

Given under my hand and seal this day of 19 .
(Seal).

Signature.

Official Designation.

* These words should be omitted where the summons is for the production
of documents only.

FORM X [Nero]

Forms of Account to be kept by persons licensed under section 8 in respect of transactions of buying goods on behalf of Principals.

[See rule 12 (5)]

DT

..... (The Principal)

Date of order to buy the goods.

Date of receipt of order.

The quantity and description of the goods ordered and the rates, if any.

RS. A. P. RS. A. P. RS. A. P.

FORM XI [New]

Form of Account to be kept by persons licensed under section 8 in respect of transactions of selling goods on behalf of Principal

[See rule 12 (5)]

To

.....(The Principal)

(1) Date of receipt of goods.	(2) Quantity and description of goods received.	(3) The remuneration or brokerage (entire upon. agreed)	(4) The date of sale.	(5) The quantity sold.	(6) The name and address of the person to whom sold.	(7) The amount actually collected from the buyer.	(8) The date on which you were credited.	(9) The amount credited.	(10) Agreed commission or brokerage (entire remuneration).	(11) Legitimate incidental charges actually incurred (each item separately specified).
									Total amount debited towards.	

RS. A. P. RS. A. P. RS. A. P.

NOTIFICATIONS

I

In exercise of the powers conferred by sub-section (3) of section 1 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased to appoint the 1st day of October 1939 as the date on which all the provisions of the said Act (except section 1 which has already come into force) shall come into force. (No. 722, *Fort St. George Gazette*, dated 29th August 1939).

In exercise of the powers conferred by section 1, sub-section (2), of the Madras General Sales Tax (Amendment) Act, 1947 (Madras Act XXV of 1947), His Excellency the Governor of Madras hereby appoints the 1st day of January 1948 as the date on which all the provisions of the said Act (except section 1 which has already come into force), shall come into force (issued as No. 713, *Fort St. George Gazette*, dated 17th December, 1947).

In exercise of the powers conferred by section 1, sub-section (2) of the Madras General Sales Tax Act XVI of 1948), His Excellency the Governor of Madras hereby appoints the 1st day of September 1948 as the date on which section 2 of the said Act shall come into force (No. 781, *Fort St. George Gazette*, dated 31st August 1948).

Comments

These notifications must be read with Section 1 (3) of the main Act of 1939 and Amendment Act XXV of 1947 and Section 2 of Act XVI of 1948.

II

(i)

In exercise of the powers conferred by clause (a-1) of section 2 and sub-sections (1) and (2) of section 14 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased—

(1) to authorize—

(a) Assistant Commercial Tax Officers to exercise the powers of an assessing authority in the case of dealers whose turnover does not exceed twenty thousand rupees ; and

(b) Deputy Commercial Tax Officers to exercise the powers of an assessing authority in the case of dealers whose turnover exceeds twenty thousand rupees :

Provided that—

(i) in the case of a dealer on carrying business in more than one revenue taluk within the same revenue district, the assessing

authority shall be the Deputy Commercial Tax Officer having jurisdiction over the area in which the head office or the principal place of business of the said dealer, is situated ; and

(ii) in the case of a dealer carrying on business in more than one revenue district, the assessing authority shall be the Deputy Commercial Tax Officer of the revenue districts having jurisdiction over the area in which the head office or the principal place of business of the said dealer is situated and if such head office is outside the Province, the Deputy Commercial Tax Officer of such one of the revenue districts concerned as the Board of Revenue may by general or special order authorize in that behalf ;

(iii) for purposes of registration under Section 8-A of the said Act, the Assistant Commercial Tax Officer having jurisdiction over the area in which the principal place of business of the dealer is situated, shall be the assessing authority [clause added as per notification in the *Fort St George Gazette*, dated 17th February, 1948.]

(2) to empower all Commercial Tax Officers, Deputy Commercial Tax Officers and Assistant Commercial Tax Officers to require dealers carrying on business in any kind of goods to produce before them, the accounts and other documents, and to furnish any other information relating to such business ; and

(3) to authorize all officers of the Revenue Department not lower in rank than a Revenue Inspector, all officers of the Excise and Police Departments not lower in rank than a Sub-Inspector and all Commercial Tax Officers, Deputy Commercial Tax Officers and Assistant Commercial Tax Officers to inspect at all reasonable times the accounts and registers maintained by dealers in the ordinary course of their business, the goods in their possession and their offices, shops, godowns, vessels or vehicles. (No 819, *Fort St. George Gazette*, dated 15-9-39.)

(ii)

Assistant Commercial Tax Officer of Kollegal authorised to exercise powers of the Deputy Commercial Tax Officer also in Kollegal taluq.

His Excellency the Governor of Madras hereby directs that the Assistant Commercial Tax Officer of Kollegal in the Coimbatore District shall exercise the powers and perform the functions of a Deputy Commercial Tax Officer also in the said taluq under the provisions of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939).

This notification shall be deemed to have come into force on the 1st July 1948. (No. 732, *Fort St. George Gazette*, dated 17-8-48.)

Comments

In Notification (i) Clause (1) must be read with section 2 (a-i) and Section 8, and clauses (2) and (3) must be read with section 14 (1) and (2).

III

Act and Rules—Applicability to Railway lands and to Partially Excluded areas, etc.

Main and Amending Act.—The Act and rules are not in force in the Railway land in Madras States (*Fort St. George Gazette*, dated 5th September, 1939.)

The Act as amended and Rules as amended are in force in the Agency Tracts also (*Fort St. George Gazette*, dated 26th September 1939 and 23rd December, 1947)

Comments

The changes introduced in the Act and rules in relation to Agency tracts are of a minor character necessitated by the constitutional position of the areas under the Government of India Act, 1938. Though Banganapalle and Pudukotta have merged with the Madras Province, this Act has not yet been made applicable to the territories. The Notification issued must be read with Section 1 (2) and 2 (g) of the Act.

APPLICATION OF THE LAW TO MERGED AREAS

(Banganapalle and Pudukottai)

In exercise of the powers conferred by section 4 of the Extra-Provincial Jurisdiction Act, 1947 (Central Act XLVII of 1947), read with the notification of the Government of India, in the Ministry of States, No. 176-1B, dated 23rd March 1948, and of all other powers enabling him in this behalf, His Excellency the Governor of Madras hereby makes the following order, namely :—

1. The Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), as amended from time to time shall, subject to the provisions of this order, apply to the States of Banganapalle and Pudukottai as if the said States formed part of the Kurnool and Tiruchirapalli districts respectively in the Province of Madras.

2. In the said Act—

(1) In section 1 for sub-section 3, the following sub-section shall be substituted, namely :—“(3) It shall come into force on the 1st day of November 1948.”

(2) In section 3, sub-section (4) the proviso shall be omitted.

(3) In section 8 B—

(i) in sub-section (1), in the proviso, for the expression “1st day of April 1948”, the expression “1st day of April 1949” shall be substituted ;

(ii) in sub-section (2), for the expression "1st day of April 1947" the expression "1st day of November 1948" shall be substituted.

(4) in section 19, sub-section (4) shall be omitted.

3. The said Act shall supersede the corresponding State Act (by whatever name called), if any, at present in force in the said States.

4. Any court, tribunal or authority may construe the provisions of the said Act applied by this order to the said States and of any notification, order, by-law, rule or regulation made or issued thereunder with such modifications not affecting the substance, as may be necessary or proper in order to adapt them to the matter before the Court, tribunal or authority as the case may be (No. 961, in the *Fort St. George Gazette*, dated 19-10-48).

Comments

This notification must be read with Section 2(g) of the Act.

The Provincial Government exercising powers conferred on it by the Central Government (preamble above) applies the Madras General Sales Tax Act to the States of Banganapalle and Pudukottai (clause 1 above) from 1st November 1948 [cl. 2(1)] and the State Sales Tax Acts, if any, in force in these merged areas get automatically repeated (cl. 3) from that date.

The territories of Banganapalle and Pudukottai are treated as parts of Kurnool and Tiruchirappalli districts, respectively, (clause 1).

In general, all the rules, notifications, etc., issued under the Act apply to the territories and the authorities exercising powers or considering questions under this Act (taxing, licensing, appellate or revisional authorities, magistrates, courts, etc.), are enjoined and permitted to construe the rules, notifications, etc., as substantially adapted to the merged areas (Banganapalle and Pudukottai) (clause 4).

Clause 2(2) and clause 4 remove the normal conditions to the operativeness to the rules, viz., approval of turnover rules by Legislative Assembly and previous publication in the *Fort St. George Gazette* for four weeks, so far as their applicability to these territories is concerned.

In view of the fact that the Act and rules are made applicable only from 1st November 1948, necessary changes in the date of operation of section 8-B are made. Unregistered dealers can continue to collect sales tax up to 1st April 1949 [clause 2 (3) (i)] in the territories of Banganapalle and Pudukottai. Similarly the obligation of a dealer in Banganapalle and Pudukottai to pay over to Government all taxes collected by him from his customers starts only from 1st November 1948, the date from which the Act and rules come into effect in the territories.

It is clear from the above notification that A.C.T.O.'s and Dy. C.T.O.'s appointed by the Provincial Government (*See Notification II* which applies) can exercise powers within these merged areas. Similarly the C.T.O.'s of Kurnool and Trichirapalli are the revisional and appellate authorities in respect of orders passed by licensing and assessing authorities in the territories of Banganapalle and Pudukottai respectively. The Dy. Commissioner will be the revising authority within the meaning of G.S.T.R. 14 in respect of assessment, etc. in Banganapalle, while the Deputy Commissioner of Madras will be the revising authority in respect of assessment, etc., in Pudukottai. The Commissioner of Commercial Taxes, Madras (Board of Revenue), has the ultimate revisional control in respect of both the territories (Banganapalle and Pudukottai).

For powers of original authorities, other authorities, etc., *See Introduction*.

The obligations of licensees, assessees, etc., to submit returns, pay taxes, etc., apply to licencees, and assessees in the merged areas (*See Introduction*).

Application of Rules and Notifications to merged areas

A supplementary notification extends the following rules and notifications as amended from time to time to the two merged areas (Pudukottai and Banganapalle), with effect from the 1st November, 1948.

1. The Madras General Sales Tax (Turnover and Assessment) Rules 1939.

2. The Madras General Sales Tax Rules, 1939.

3. Notifications relating to—

(a) Assessing authorities (Notification II).

(b) List of articles eligible for rebate under Sec. 7 of the Act (Notification V).

(c) Rates of Tax applicable to dealers in vegetables and fruits (Notification IV, No. 715).

(d) Exemption in respect of exports of raw jute (Notification IV, No. 717).

(e) Exemption in respect of certain classes of agents of non-resident dealers (Notification IV, No. 368).

(Notification No. 1159, published in the *Fort St. George Gazette*, dated 23rd November 1948—abridged.)

Comments

This notification which can be read with clause 4 of the main notification (No. 961 above) sets out specifically the rules and notifications issued under the Act, which are made applicable to the merged areas.

IV

(i)

In exercise of the powers conferred by section 6, sub-section (1), of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), as amended by Madras Act XXV of 1947, His Excellency the Governor of Madras hereby directs that dealers whose turnovers for the year 1947-48 are as specified below shall pay tax in respect thereof under section 3, sub-section (1), of the said Act, as follows :—

(1) A dealer whose turnover is not less than ten thousand rupees and is not more than fifteen thousand rupees during the said year shall pay a tax of seventy-two rupees in respect of his turnover upto and inclusive of the 31st December 1947 and a tax at the rate of three pies for every rupee in his turnover from the 1st January 1948 to the 31st March 1948 (both days inclusive) ;

(2) a dealer whose turnover exceeds fifteen thousand rupees but does not exceed twenty thousand rupees during the said year shall pay a tax of one hundred and eight rupees in respect of his turnover up to and inclusive of the 31st December 1947 and a tax at the rate of three pies for every rupee in his turnover from the 1st January 1948 to the 31st March 1948 (both days inclusive) ;

(3) a dealer whose turnover during the said year exceeds twenty thousand rupees, shall pay a tax at the rate of one per cent. of his turnover in respect of his turnover up to and inclusive of the 31st December 1947 and a tax at the rate of three pies for every rupee in his turnover from the 1st January 1948 to the 31st March 1948 (both days inclusive) [No. 714, *Fort St. George Gazette*, dated 17th December, 1947]

(ii)

In exercise of the powers conferred by section 6, sub-section (1) of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), as amended by Madras Act XXV of 1947, His Excellency the Governor of Madras hereby directs that every dealer in vegetables and fruits (other than canned, preserved, dried or dehydrated vegetables and fruits) whose annual turnover does not exceed twenty thousand rupees, shall, notwithstanding anything contained in Notification No. 714 supra, pay tax under section 3, sub-section (1) of the said Act for each year including the year 1947-48 at the reduced rates specified below :

(i) If his turnover is not less than ten Ninety-six rupees.
thousand rupees but does not
exceed fifteen thousand rupees.

(ii) If his turnover exceeds fifteen One hundred and
thousand rupees but does not forty-four rupees.
exceed twenty thousand rupees.

[No. 715, *Fort St. George Gazette*, dated 17th December, 1947.]

(iii)

In exercise of the powers conferred by section 6, sub-section (1) of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), as amended by Madras Act XXV of 1947, His Excellency the Governor of Madras hereby directs that any person appointed by the Provincial Textile Commissioner as a 'Representative Buyer' in the scheme of distribution of mill cloth in the Province of Madras shall, with effect on and from the 1st day of January 1948, pay tax under section 3, sub-section (1) of the said Act at the reduced rate of one-half of one per cent. on his turnover. (No. 716, *Fort St. George Gazette*, dated 17th December, 1947). This notification has been cancelled with effect from 20-1-48 (*G. O. 613, published in the Fort St. George Gazette, dated 30-3-48*).

(iv)

In exercise of the powers conferred by section 6, sub-section (1) of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), as amended by Madras Act XXV of 1947, His Excellency the Governor of Madras hereby exempts every sale of raw jute with effect on and from the 1st day of January 1948, from tax under section 3, sub-section (1) of the said Act, if the sale is for delivery outside the Province and delivery is actually so made. (No. 717, *Fort St. George Gazette*, dated 17th December, 1947.)

(v)

Banks and indent and canvassing agents of non-resident dealer exempt from tax.

In exercise of the powers conferred by section 6, sub-section (1) of the Madras General Sales Tax Act (Madras Act IX of 1939), as amended by Act XXV of 1947, His Excellency the Governor of Madras hereby exempts from all taxes payable under the said Act

(1) banks in the Province of Madras; and

(2) every person in the said Province employed by a non-resident dealer otherwise than

(i) as a mercantile agent as defined in the sale of goods Act, 1930, or

(ii) as an agent for handling goods or documents of title relating to goods or,

(iii) an agent for the collection or payment of the sale price of goods or as a guarantor for such collection or payment.

[No. 368, *Fort St. George Gazette*, dated 18-5-48].

(vi)

General tax reduced to one per cent from three pies per rupee in respect of transactions in British Cochin.

In exercise of the powers conferred by section 6, sub-section (1) of the Madras General Sales Tax Act, 1939 (Madras Act IX of

1939), as amended by Madras Act XXV of 1947, His Excellency the Governor of Madras hereby reduces the rate of tax specified in clause (b) of sub-section (1) of section 3 of the said Act from three pies for every rupee in the turnover to one per cent of the turnover in respect of the transactions of dealers in British Cochin area (Fort Cochin).

This notification shall be deemed to have come into operation on the 1st August 1948.

[No. 734, *Fort St. George Gazette*, dated 7-8-48].

(vii)

No Notifications have been issued falling under G. S. T. R. 6 (12).

Comments.

See sections 3, 6 and 14-A Commentaries.

See also Introduction "*Note on Transactional Law, 1947-48*".

V

In exercise of the powers conferred by section 7 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is pleased to notify the following finished articles of industrial manufacture as those in respect of which a rebate shall be allowed under the said section :—

Articles

- | | |
|---|---|
| 1 Agricultural implements and appliances. | 19 Ice and dry ice |
| 2 Aluminiumware. | 20 Industrial machinery and other products of engineering works, workshops, foundries, etc. |
| 3 Bone grists, bone meals, steamed horn and hoof meal, steamed and unsteamed leather meals. | 21 Ink. |
| 4 Bricks and tiles. | 22 Jewellery. |
| 5 Chemicals. | 23 Jute manufactures. |
| 6 Carpets. | 24 Lace. |
| 7 Cement. | 25 Leather goods and boots and shoes. |
| 8 Coffee as roasted berries or powder. | 26 Manures. |
| 9 Coir manufactures. | 27 Matches. |
| 10 Condiments. | 28 Medicinal preparations. |
| 11 Confectionery. | 29 Metalware. |
| 12 Cotton cloth including surgical wadding. | 30 Oil-cakes and vegetable oils. |
| 13 Electroplated ware. | 31 Paper, photomounts, albums, corners & folders. |
| 14 Enamelware. | 32 Pencils. |
| 15 French polish. | 33 Pith helmets. |
| 16 Furniture and other wood manufactures. | 34 Pottery and ceramic goods other than pipes. |
| 17 Glassware. | 35 Printers' type, spacing materials and furniture. |
| 18 Hosiery. | 36 Quinine. |
| | 37 Roofing felt. |

Articles—(contd.)

38 Ropes.	49 Syrups and essences.
39 Sandalwood oil.	50 Slabs and marbles.
40 Silk goods.	51 Bangles and buttons & beads.
41 Silverware.	52 Artificial silk goods.
42 Soaps.	53 Tinned or canned fruits, fish and provisions.
43 Steel manufactures.	54 Fish oil and guano.
44 Sugar.	55 Toilet articles and toilet ingredients.
45 Umbrellas—Assembled.	55-A Viscose capsules.
46 Woollen manufactures other than carpets.	56 Mats, mattings and brushes.
47 Gold thread.	
48 Toys.	

[No. 845, *Fort St. George Gazette*, Part I, dated 26th September, 1939, with subsequent amendments].

Comments

The notification must be read with Section 7 and Rules 9 and 10 (G. S. T. Rules). Entry "beads" in item 51 was added by notification on 23-3-48.

VI

MISCELLANEOUS NOTIFICATIONS

(i)

In exercise of the powers conferred under Section 35, Court Fees Act, 1870, His Excellency the Governor of Madras is pleased to remit the fees payable upon the undermentioned applications and the documents accompanying such applications :—

Applications made under rule 5 (1), 6 (2), 6 (7), 6 (8) or 9 of the Madras General Sales Tax Rules, 1939 [*Fort St. George Gazette*, dated 23rd April, 1940, page 549].

Comments.

In view of the notification extracted above all kinds of applications for grant of licence, or renewal thereof and applications for rebate, need not be stamped.

(ii)

Manufacturers selling cotton cloth or yarn to a person other than the consumer is permitted to recover sales tax payable under the local law (Textile Commissioner's notification, *Fort St. George Gazette*, dated 25th November, 1947.)

Perhaps the percentages would be fixed by executive instructions by the Board of Revenue.

[245-A]

NOTIFICATION IV

Owners of single country chekku exempted from liability to sales tax for a period of one year from 1st April, 1948.

(G. O. Ms. No. 2945, Revenue, 10th December, 1948).

No. 1336.

In exercise of the powers conferred by section 6, sub-section (1) of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), as amended by Madras Act XXV of 1947, His Excellency the Governor of Madras hereby exempts for a period of one year from the 1st April, 1948, every person owning or having an interest in only one country oil chekku and dealing exclusively in the produce of such chekku from payment of any tax under section 3 (1) of the said Act in respect of such dealings subject to the condition that he shall take out a licence in the following form which shall be granted on payment of a fee of Rs. 6 (Rupees six only).

LICENCE TO A DEALER OWNING A SINGLE COUNTRY OIL
CHEKKU

Licence No. dated Sri having paid
a licence fee of Rs. 6 (Rupees six only) is hereby licensed as a dealer
in oil and oil cake for the year ending 31st March, 1949 at
(place of business), subject to the provisions of the Madras General
Sales Tax Act, 1939, and the rules made thereunder and to the
following further conditions :—

(1) The licensee shall not own or have any interest in more than one country oil chekku.

(2) The licensee shall deal exclusively in the produce, namely, oil and oil-cakes of his/her country oil chekku.

(3) The licensee shall be exempt from sales tax on sales of oil and oil-cake produce in his/her chekku.

(4) The licensee shall not collect any amount by way of tax under the provisions of the Madras General Sales Tax Act, 1939.

(5) No corrections in the licence shall be valid unless ordered and attested by the undersigned.

Place :

Date

Licensing Authority.

(No. 1336, *Fort St. George Gazette*, dated 21st December, 1948)

Comments.—(See page 76-A).

APPENDIX I

Model Appeal & Revision Forms

I APPEAL AGAINST ASSESSMENT

One Rupee Court Fee Stamp.

To

THE COMMERCIAL TAX OFFICER OF (*mention the District*)

G.S.T.A. OF 194 .

(Name, , son of *Appellant.*
residing at

Appeal under Section 11 G.S.T. Act and Rule 13 G.S.T. Rules
against assessment to tax finally for (mention year
provisionally for (mention year of
of assessment, by the Assistant Commercial Tax Officer of
assessment, Deputy Commercial Tax Officer
dated . The appeal is filed against the
entire assessment . The order of assessment
portion of assessment which is not admitted. The order of assessment
served on appellant on and the notices served on appellant
on are enclosed herewith.

The tax demanded is not admitted and an application for stay
of collection of tax pending appeal is filed herewith.

or

The tax demanded is paid under protest and the receipt is enclosed.

or

The instalments due up-to-date of appeal in respect of the admitted
portion of the tax is paid and the receipt is herewith enclosed.

I. (State facts)

II. Appellant begs to submit that, for the following reasons
amongst others, the assessment is opposed to law, and is unjustified
by the facts and circumstances of the case.

(a)

(b) etc.

} [State grounds *seriatim* and meet the points
in the order of the assessing authority].

III. Wherefore it is prayed that Your Honour be graciously
pleased to set aside the assessment, and direct refund of tax paid and
render justice.

I, _____, the appellant named in the above memorandum of appeal do hereby declare that what is stated herein is true to the best of my knowledge and belief, and that I signed this at.....on

II

One Rupee Court Fee Stamp.

APPEAL AGAINST OTHER ORIGINAL ORDERS

Title, etc., as in Form above.

Appeal under Rule 13 G.S.T. Rules against the original order of the Assistant Commercial Tax Officer dated _____ (here state nature of order) Deputy Commercial Tax Officer The order is herewith enclosed.

I. State facts

II. Appellant begs to submit that for the following reasons amongst others, the order of the assessing licensing authority below is registering opposed to law, and is unjustified by the facts and circumstances of the case.

(a) } [Here state the grounds *seriatim* and meet
(b) } the points mentioned by the authority below
in his order]

Verification and relief as above.

III

Twelve annas Court Fee Stamp.

To.

THE COMMERCIAL TAX OFFICER OF.....

MIS. PETITION OF 194 .

IN G.S.T.A. OF 194

OF COLLECTION OF TAX

PETITION FOR STAY

of operation of original order of authority below
son of

(Name).

{ *Petitioner.*
Appellant.

Petitioner has filed an appeal against the Order of A.C.T.O.
Dy. C.T.O. (place
of authority) (state nature of order). The grounds
of Appeal, it is prayed, may be read as part of this petition. Petitioner
is advised that he has a fairly good case in appeal, and he prays that
pending appeal, the operation of the order of the assessing
licensing authority
registering
below be stayed.

Petitioner.

Court Fee Stamp One Rupee and eight annas.
--

IV
REVISION

To

THE COMMISSIONER OF COMMERCIAL TAXES
DEPUTY COMMISSIONER OF COMMERCIAL TAXES

Board of Revenue, Madras.
Bezwada-Coimbatore-Madras.

G.S.T. REVISION PETITION OF 194 .

(Name) son of (name) .. *Petitioner.*

Revision petition preferred by the abovenamed petitioner under
Section 12 and Rule 14 G.S.T. Rules against the appellate order of
the Commercial Tax Officer dated * Order of
(state the authority) showeth as follows :—

[The order of the appellate authority
assessing licensing or other original authority
dated..... served on petitioner is enclosed herewith]

The abovenamed Petitioner begs to prefer this petition for revision
against the order of without filing an appeal since the order is
not appealable
reason if any). (state other

I. Facts

II. Rest as in Form II (Use the word Petitioner for Appellant)

* If Revision is preferred against an original order, state why no appeal
was preferred.

APPENDIX II

THE INDIAN CONTRACT ACT

[EXTRACTS]

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

Interpretation clause

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal :

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise :

(c) The person making the proposal is called the “promisor,” and the person accepting the proposal is called the “promisee” :

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise :

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement.

(f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises :

(g) An agreement not enforceable by law is said to be void :

(h) An agreement enforceable by law is a contract :

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Communication accep-
tances and revocation of
proposals

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Communication, when
complete.

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor ;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it ;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations

(a) *A* proposes, by letter, to sell a house to *B* at a certain price.
The communication of the proposal is complete when *B* receives the letter.

(b) *B* accepts *A*'s proposal by a letter sent by post.
The communication of the acceptance is complete,

as against *A*, when the letter is posted ;
as against *B*, when the letter is received by *A*.

(c) *A* revokes his proposal by telegram.

The revocation is complete as against *A* when the telegram is despatched.
It is complete as against *B* when *B* receives it.

B revokes his acceptance by telegram. *B*'s revocation is complete as against *B* when the telegram is despatched, and as against *A* when it reaches him.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterwards.

Revocation of proposals and acceptances.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations

A proposes, by a letter sent by post, to sell his house to *B*.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when *B* posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches *A*, but not afterwards.

Revocation how made.

6. A proposal is revoked,

(1) by the communication of notice of revocation by the proposer to the other party ;

(2) by the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance ;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified ;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise ; but if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, or receiving consideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

What agreements are contracts.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Performance in manner or at time prescribed or sanctioned by promisee.

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Illustrations.

(a) *B* owes *A* 2,000 rupees. *A* desires *B* to pay the amount to *A*'s account with *C*, a banker. *B*, who also banks with *C*, orders the amount to be transferred from his account to *A*'s credit, and this is done by *C*. Afterwards and before *A* knows of the transfer, *C* fails. There has been a good payment by *B*.

(b) *A* and *B* are mutually indebted. *A* and *B* settle an account by setting off one item against another, and *B* pays *A* the balance found to be due from him upon such settlement. This amounts to a payment by *A* and *B* respectively, of the sums which they owed to each other.

(c) *A* owes *B* 2,000 rupees. *B* accepts some of *A*'s goods in deduction of the debt. The delivery of the goods operates as a part payment.

(d) *A* desires *B*, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as *B* puts into the post a letter containing the note duly addressed to *A*.

Performance of Reciprocal Promises

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

Illustrations.

(a) *A* and *B* contract that *A* shall deliver goods to *B* to be paid for by *B* on delivery.

A need not deliver the goods, unless *B* is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless *A* is ready and willing to deliver them on payment.

(b) *A* and *B* contract that *A* shall deliver goods to *B* at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless *B* is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless *A* is ready and willing to deliver the goods on payment of the first instalment.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Order of performance of reciprocal promises.

Illustrations.

(a) *A* and *B* contract that *A* shall build a house for *B* at a fixed price. *A*'s promise to build the house must be performed before *B*'s promise to pay for it.

(b) *A* and *B* contract that *A* shall make over his stock-in-trade to *B* at a fixed price, and *B* promises to give security for the payment of the money. *A*'s promise need not be performed until the security is given, for the nature of the transaction requires that *A* should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Liability of party preventing event on which contract is to take effect.

SALE OF GOODS ACT.

[EXTRACTS]

CHAPTER I

Definitions.

2. In this Act, unless there is any thing repugnant in the subject or context,—

(1) “buyer” means a person who buys or agrees to buy goods;

(2) “delivery” means voluntary transfer of possession from one person to another;

(3) goods are said to be in a “deliverable state” when they are in such state that the buyer would under the contract be bound to take delivery of them;

(4) “document of title to goods” includes a bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

(5) “future goods” means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(6) “goods” means every kind of moveable property other than actionable claims and money; and includes stocks and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(7) “mercantile agent” means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods;

(8) “price” means the money consideration for a sale of goods;

(9) “property” means the general property in goods, and not merely a special property;

(10) “quality of goods” includes their state or condition;

(11) “seller” means a person who sells or agrees to sell goods;

(12) “specific goods” means goods identified and agreed upon at the time a contract of sale is made; and

CHAPTER II

FORMATION OF THE CONTRACT

Contract of Sale

4. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

Sale and agreement to sell.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Formalities of the Contract

5. (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

Contract of sale how made.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be inferred from the conduct of the parties.

Subject-matter of Contract

6. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

Existing or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

7. Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before making of contract.

8. Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

Goods perishing before sale but after agreement to sell.

The Price

9. (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

Ascertainment of price.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

10. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such Agreement to sell at valuation. third party cannot or does not make such valuation, the agreement is thereby avoided :

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description ; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

16. Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warrant or condition as to the quality or fitness, as to quality or fitness. goods supplied under a contract of sale, except as follows :-

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose :

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality :

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there is an implied condition—

(a) that the bulk shall correspond with the sample in quality ;

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample ;

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

CHAPTER III

EFFECTS OF THE CONTRACT

Transfer of property as between seller and buyer

18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Goods must be ascertained.

Property passes when intended to pass.

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Specific goods in a deliverable state

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

Specific goods to be put into a deliverable state.

22. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.

23. (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Sale of unascertained goods and appropriation.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Delivery to carrier.

24. When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—

Goods sent on approval or "on sale or return."

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

25. (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

26. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not:

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault:

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of Title

27. Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

28. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

29. When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19-A of the Indian Contract Act, 1872, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

30. (1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the Seller or buyer in delivery or transfer by that person or by a mercantile possession after sale agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV

PERFORMANCE OF THE CONTRACT

31. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

33. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

34. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

35. Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

36. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

* * * * *

Instalment deliveries. 38. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

39. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant place. 40. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

41. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

Buyer's right of examining the goods. (2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

42. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

43. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

* * * * *

CHAPTER VII

MISCELLANEOUS

62. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

63. Where in this Act any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Auction sale.

64. In the case of sale by auction—

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

* * * * *

APPENDIX III

A Bird's-eye View of Sales Tax Law in India and Pakistan

Note.—The following is the list of abbreviations used :—

Bih. = Bihar Sales Tax Act (Bihar Act VI of 1944).

Bom. = Bombay Sales Tax Act (Bom. Act V of 1946).

C.P. = Central Provinces Sales Tax Act (C.P. Act XXI of 1947).

Coch. = Cochin Sales Tax Act (1946).

E.P. = (East) Punjab Sales Tax Act (Punjab Act IV of 1941).

Mys. = Mysore Sales Tax Act (Mysore Act XLVI of 1948)

Or. = Orissa Sales Tax Act (Orissa Act XIV of 1947)

Trav. = Travancore (Tr. Bill)

U.P. = United Provinces Act (U.P. Act XV of 1948 as amended by Act XXV of 1948).

W.B. = (West) Bengal Sales Tax Act (1941)

The Madras Act is covered by commentaries and is not noticed here. The Mysore and Travancore Law are practically very close adaptatrons of the Madras Law. They are not noticed here except where they differ from the Madras Law.

A. Taxation

(i) *Non-taxable minimum.*—

Rs. 5,000 (C.P., Bih., Or.)

Rs. 10,000 (W.B., E.P., Coch., U.P., Pak., Bom., & Trav.)

Rs. 12,000 (U.P.)

Rs. 25,000 (C. P. regarding certain goods.)

(ii) *Normal rate per rupee.*—

$\frac{1}{2}$ anna (W.B., C.P., Bom., Pak.)

$\frac{1}{4}$ anna per rupee (Bih., Or.), $3\frac{1}{4}$ pies per rupee (Trav.),
1% (Coch.), $\frac{1}{4}$ % (E.P.), 3 pies (Mys.).

(iii) *Point of tax.*—

Sale to unregistered dealer or Public (W.B., Bih., Or., Bom., C.P.).

All sales (Pak., E.P., Coch, U.P.)

(iv) *Rate of luxury tax.*—

One anna per rupee (C.P., U.P.), quarter anna in certain cases and in other cases half anna per rupee (Mys.)
 $\frac{1}{28}$ of rupee per rupee (Trav.).

Rate not exceeding half anna (Or.).

(v) *Taxable class extended.*—

Forward contracts (U.P.), Primary producer also taxed at stage of first sale (Coch.). Electrical energy included (U.P.), Contractor in works contract taxed (W.B., Bih., Bom., C.P.). Hire purchases included (Coch., Or., U.P., E.P., W.B., Bih., Bom., C.P.). Non-resident's agent included (Coch., U.P., E.P., W.B., Bih., Bom., C.P., Or.).

B. List of Luxury goods subject to high rate of tax

N.B.—*List of luxury articles in Madras, Mysore and Travancore is the same. [See Sec. 3 (2), Madras Act], and they are not repeated here.*

Motor Goods Motor Vehicles (C.P., U.P., Bom.), Motor cars, (U.P.), Motor taxicabs, motor cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans, motor lorries, motor cycles (U.P., C.P., Bom.), is Autocycles (C.P.), Motor chassis (U.P.), Accessories of Motor Vehicles (Bom., U.P.), Accessories of motor cycles (Bom.), Spare parts of motor vehicles, motor cycles and autocycles (C.P.), Rubber or other tyres, tubes and batteries and other articles adapted for use as parts and accessories of and component parts of motor vehicles (U.P.)

Radio, Wireless, Gramophone, etc., Radio sets (C.P.), Wireless reception sets (Bom.), Wireless reception instruments and apparatus (Bom. & U.P.), Radio gramophones (U.P.), Gramophones and Records (C.P. & Bom.), Component parts of Wireless instruments including valves, accumulators, amplifiers, loudspeakers, designed for wireless reception (U.P.), Valves and other accessories of wireless reception sets (Bom.).

Refrigerators and Air conditioning Plants Refrigerators and Air conditioning plants (U.P., Bom.).

Photographic Goods Cameras, Cine-cameras, films, film packs and photographic plants (C.P.), Cinematographic and Photographic cameras and film plates, paper and cloth required for use therewith (C.P.), Cinematographic articles including films (Bom.)

Electrical goods Electroplated articles and wares (C.P.), Electrical goods and appliances of certain kind (C.P.).

Silk, Perfumes, Toilets, Toys, etc., Silk, artificial silk, silk goods (C.P.). Silks of all kinds (Bom.), Scents and perfumes (U.P.), Toys (C.P.), Toilet articles (C.P. Bom.), Perfumery, Cosmetics (C.P.).

Cigars, etc., Cigars, Cheroots, cigarettees and pipe tobacco (C.P.)

Jewellery and ornaments, articles and wares of gold and silver or of specie excepting ornaments (C.P.) Jewellery and precious stones (C.P. & Bom.), Pearls (Bom.), Real and cultured pearls, unset precious stones (C.P.). Imitations of the following:—Gold ornaments, silver ornaments made of specie, jewellery, precious stones and pearls (C.P.)

Propelling pencils (C.P.)

Fireworks, etc., Rifles, revolvers, pistols and ammunition (C.P.), arms and ammunition (Bom.), Fireworks (C.P.)

Miscellaneous, Table cutlery including knives, forks and spoons (C.P.), Glass-ware, domestic pottery and China (C.P.), Carpets (Kalins), and Galichas (C.P.), Embroidery (C.P.), Ivory articles and inlaid with ivory (C.P.), Upholstered furniture (C.P.).

C. List of goods taxed at one point or exempt

N.B.—In Mysore and Travancore the list is the same as in the Madras Act (See Sec. 5 of the Madras Act) and the items are not repeated here. Additional item if any alone is noticed.

(a) *In multi-pointed scheme Tax on first sale only.* Textiles manufactured by Mills and powerlooms, tax on first dealer at 6 pies rupee (Mys.), Beedies (Mys.), Cheroots (Mys.), Cigarettes (Mys.), Snuff (Mys.)

(b) *Additional single-pointed tax on first Sale:*—Biris (Or.), Coffee (Or.), Ghee (Or.), Matches (Or.), Oils including Kerosene oil (Or.), Spices and condiments (Or.), Soaps (Or.), Sugar (Or.).

(c) *Exemption (total)*—

(i) Pertaining to Agriculture and consumption

Agricultural implements. (W.B., Coch., & U. P.), Agricultural implements operated exclusively by human or animal agency (Bom.), agricultural implements operated exclusively by human or animal agency when sold to bona fide agricultural purpose (C.P.). Agricultural implements costing not more than Rs. 10 (Or.)

Agricultural or horticultural produce.—Produced by primary producer (E.P.).

Betel leaves, (C.P.), Betel nuts (Coch., C.P.), Pan. (E.P.)

Tobacco. (Bom., Coch.). Indigenous tobacco for Chillams and hukkas (C.P.), Tobacco for hookka (W.B., U.P.)

Cocoanut products—husks, fibre, coir yarn, coir sold for local consumption (Coch.)

Coir or Jute, finished products of (Coch.)

Livestock, including poultry (W.B.), poultry and dairy products from fowls kept by agriculturists (U.P.)

Cattle feeds—fodder, cotton, seeds, oilcake, etc. (Coch., C.P., & Bom.), groundnut and coconut oilcake (Coch., C.P., Or.)

Fertilisers (W. B., Bom., Or.), Fertilisers not for export (Coch.), Fertilisers including oilcakes sold for manurial purposes (C.P.), Manures including oilcakes (Bom.)

Foodgrains (U.P.), Rice, Paddy, Wheat, other cereals and pulses (Coch., E.P., and Or.), All cereals and pulses including rice (Mys.), Grains cereals and pulses not sold in sealed containers (C.P., Or.), All cereals and pulses not sold in sealed containers (W.B.) Pulses (U.P.)

Fish (Bom.), Fresh fish (W.B., C.P.). Fish not sold in sealed containers (E.P., Or., Coch.) Fish not intended for export (Coch.). Fish (untinned and undried) (U.P.)

Fruits (Bom.), Fresh fruits (E.P., C.P.)

Meat (Bom.), Meat not sold in sealed containers (E.P., Or.) Fresh meat (C.P.) Meat not cured or frozen (Coch., W.B.). Meat (undried and untinned) (U.P.)

Milk (Bom., W.B., C.P., U.P.), Fresh milk (Coch., E.P.)

Fresh eggs (Bom.).

Bread (W.B., Bom., C.P., Or.).

Flour Atta maida Sujji (Bom., C.P., Mys., Or., E.P., U.P.), Iran (Bom., E.P., Or., Mys., C.P.)

Food or cooked food except when sold in tin container (U.P.). Cooked food in hotels, etc. (C.P.), Cooked food if turnover does not exceed Rs. 15,000 and if notice is displayed that no Sales Tax is collected (Coch.). Cooked food other than sweetmeats, cakes and pastries (W.B.), Cooked food (*Abhada*) sold within the compound of Jagannath Temple at Puri (Or.) Cooked food when cost of single meal does not exceed annas eight (Bom.).

Buttermilk and Curds (Bom.).

Vegetables (Coch.), Vegetables not sold in tins, etc. (E.P., C.P.), Green or non-medicinal vegetables (Bom.), Green or dried vegetables other than medicinal preparations except when sold in sealed containers (Or.), Green vegetables (Bih.), Fresh vegetables except when sold in tin containers (U.P.).

Ghee (C.P.).

Water (U.P.), Water other than bottled, aerated or mineral waters (Coch., W.B.), Water other than aerated, or mineral waters sold in bottles or sealed containers (Or.).

Edible oils prepared by handpressing and animal power (U.P.), Coconut oil for domestic consumption for use within State (Coch.).

Country liquor (Or.).

Sugar, gur, jaggery, etc. (Bom., W.B., Coch.), *Gur* (U.P.), *Gur and Molasses* (Or.).

Salt (Bom., W.B., Or., Coch., U.P., Mys.). *Salt except when sold in sealed tins* (E.P.).

Chillies, pepper, Tamarind (Bom., C.P.).

Turmeric powder (C.P., Bom.).

(ii) **Yarn, Clothing, etc.**

Cotton (E.P.)

Cloth (cheap) (Bom. Coch.), *Dhoties, lunges and sarees for poor* (W.B.), *Handloom cloth* (E.P., W.B.), *Coarse cloth* (C.P.), *Handwoven and handloom cloth* (U.P.), *Standard cloth* (Or.), *Handloom cloth not exceeding Rs. 10 in price* (Or.).

Yarn (W.B.), *Handspun yarn* (Coch.), *All kinds of yarn other than wool yarn used in knitting* (Or.).

Woollen goods. *Kamblies not coating more than Rs. 6* (Bom.). *Knitted Woollen garments* (U.P.). *Cumbles woven on handloom* (Mys.).

Raw jute (Or.)

(iii) **Lighting, etc.**

Electricity (E.P., W.B., Or., Bom.), *Electrical energy for industrial purposes* (U.P.)

Matches (W.B., C.P., Bom, Or., U.P. and Mys.).

Firewood (U.P.), *Firewood, Charcoal, cocoanut shell, etc., for domestic consumption* (Coch.), *Firewood and charcoal for domestic purposes* (C.P.).

Coal and coke (W.B. Or.), *Coal, soft coke* (U.P.), *Coal gas when sold to Government or Local Authority or for industrial undertaking by a gas supply company* (Bom.), *Coal gas when supplied to a public charitable institution* (W.B.).

Kerosene (Bom., C.P., W.B., Mys.), *Inferior Kerosene* (Or.).

Motor Spirit (E.P., W.B., Bom C.P., U.P.), *Motor Spirit used for providing efficient motive power for motor vehicle* (Or.).

(iv) **Books, Newspapers, Educational requirements, etc.**

Newspapers, etc. *Newspapers* (C.P., E.P., W.B., U.P., Or.), *Newspapers in circulation* (Coch., U.P.), *Magazines* (U.P.).

Books—(E.P., U.P.), *Sacred Books prescribed by notification* (W.B., E.P.), *Following sacred Books* :—*The Vedas, The Upanishads, the Ramayana, The Mahabharata, the Gita with Commentaries, the Puranas, the Quoran, Dharma*

Pada, the Granth Sahib, the Bible, Zend Avesta, etc. (C.P. Or.), Hymns to different Gods and Goddesses, the Kalpasutra, the Bhagawat of Jagannatha Das (Or.).

Text-Books.—Text-books approved by the Director of Public Instruction (Bom.) Text-books approved for primary classes (W.B., Coch.), Text-books approved by the Director of Public Instruction, for infant class and classes I to V (Or.).

Paper (U.P.)

Slates, etc.—Slates, slate pencils, footrule, chalks, crayons, notebooks (E.P., Bom., C.P.).

(v) Necessary Medicines

Quinine (Bom.), Quinine and febrifuge (W.B., C.P.), Quinine and Cinchona febrifuge (Or.).

(vi) Bullion, Jewellery

Bullion and specie (W.B., Bom., C.P., Coch., Or.).

Gold ornaments under certain conditions (W.B.), Bullion, coins (U.P.).

(vii) Miscellaneous

Actionable claims (All Acts), Stocks, Shares and Securities (All Acts.)

Products of cottage and home industries (C.P.), Goods manufactured and sold in a factory by manufacturers in Province except gold jewellery and silverware (E.P.).

Duty levied goods (Goods in respect of which duty is levied under Provincial or State Acts) (Coch., C.P.).

Hides and skins : Raw hides and Raw skins (W.B.).

D. Rebate for Export Outside Province

N.B.—List of goods entitled to rebate on export is the same in Madras and Mysore. (See Notification under Madras Act). On additional articles are given below :—

Beedies (Mys.)

Cheroots (Mys.)

Cigarettes (Mys.)

Snuff (Mys.)

E. Exemption of Institutions and Persons

Crown (All Sales Tax Acts). Co-operative Societies (E.P.). Hawkers, cobblers, dentists, artists, photographers, printers, watchmakers (in respect of repairs of other services), seed-sellers, parched grain sellers, manufacturers of chicks, mats and cane chairs. Persons associated in a mess run for the benefit of members without profit

motive (E.P.). Sales to Crown (Government works) by Cement Companies. (E.P.). Goods from Canteen Stores Dept. of Govt of India sold to Allied or H.M. forces (Or.). All-India Spinners' Association (U.P.). Gandhi Ashram (U.P.)

F. Exemption of Places

Under notification issued by Government certain places were exempt from operation of Act (E.P.)

G. Government's Power to notify modifications or reductions.

- (a) *Exemption regarding goods* (Bom., W.B., Bom., Bih., Mys., Coch., Trav.)
- (b) *Reduction of rates relating to Goods* (Coch., Trav.).
- (c) *Exemptions regarding places* (U.P., E. P.).

H. Registration

Registration in multi-pointed system (U.P., Mys., Trav.).

Registration in single-pointed system (Bom., W.B., Bih., Or., C.P.)

I. Authorities

- (i) *Original authority* : Sales Tax Officer (E.P., U.P., C.P., Bom., Coch.), Commercial Tax Officer (W.B.), Assistant or other Sales Tax officer (Or.).
- (ii) *Appellate authority* : Assistant Commissioner in certain cases or Dy. Commissioner or Commissioner in certain cases and further appeal to Tribunal (C.P., Bom.). Collector of Sales Tax or Revenue Commissioner as prescribed (Or.). Deputy Commissioner and further appeal to Commissioner (Coch.). Judge (Appeals) (U.P.). Collector of the District (E.P.), Assistant Commissioner in certain cases and Commissioner in certain cases and further appeal to Board (W. B.). Dy. Commissioner (Mys.).
- (iii) *Revisional Authority* : Commissioner (C.P., Bom., Coch., W.B.). Collector (E.P.). Dy. Commissioner and Commissioner (Mys.). Judge (Revisions) (U.P.).
- (iv) *Review* by authority that passes order permitted in certain cases (Or.).

J. High Court Reference

Provision made (Bom., W.B., Bih., U.P., C.P., Mys., Coch.).

APPEN

Comparative Table of important

Sl. No.	POINT.	Madras Act Section	Travancore Bill Section.	Mysore Act Section.	Cochin Act Section.	U.P. Act Section.
1	Definitions :— (a) Dealer includes non-resident's agent	2(b) & 14(A)	2(d)	2(d)	"2(c) Primary producer of agricultural produce included (Expl. II)	2(-) Government Departments excluded.
	(b) Goods, Actionable claims, stocks, shares, etc., excluded. Goods used in contract works included.	2(e)	2(e)	2(e)	2(e)	"2(e) Electrical energy included
	(c) Sale. Inclusion of hire purchase. Covering all sales wheresoever they be, of goods in province. Covering goods used in works contract.	2(h)	2(k)	2(j)	2(i)	2(h)
	(d) Sale price, including Works contract.	Turnover Rule 4(3)	2(m)	.	2(j)	.
	(e) Turnover including goods in Works contract, primary producer's sale amount excluded.	2(i) & [2 (ii) tea, sale by primary producer included.	2(l)	2(k)	2(h) Primary producer's sale amount included.	2(i) No. reference to Contract Works. Poultry and dairy products also excluded.
2	Liability, Incidence Rate and tax point.	3 All Sales.	3 All Sales.	3	4 All Sales.	3 All Sales
3	Luxury Tax	3(2)	3(2)	3(2)	..	3(A) 3(B) Forward contracts also taxed.
4	Exemption and Power to notify modifications.	4, 5, 6 & 6A.	4 to 7	4 to 7	5 & 7 and schedule, which can be added to	4
5	Rebate	7	8	8	6	6
6	Agent, licensing	8	9	9	8	6
7	Registration	8A & 8B	10 & 11	10 & 11	..	8A
8	Assessment procedure (on return if correct, on Judgment after inquiry if otherwise).	9	12	12	9 to 11	7

N.B.—The Travancore Sales Tax law and Mysore Sales Tax law are only very close The U P. Sales Tax Act largely follows the provisions of the Madras Law. The Punjab

DIX IV.

sections of Sales Tax Acts in India

E. Punjab Act Section.	W. Bengal Act Section.	Bihar Act Section.	Bombay Act Section.	Central Provinces Act Section.	Orissa Act Section.
2(b)	2(c)	2(c)	2(c)	2(c)	2(c)
2(r) Works contract not covered.	2(d)	2(d)	2(d)	2(d)	2(d)
2(h)	2(g)	2(g)	2(g)	2(g)	2(g)
..	2(h) & Sales Tax Rule 2.	2(h)	2(h)	2(h)	2(h)
2(h)	2(i)	2(i)	2(j)	2(j)	2(i)
3 All Sales.	4 & 5 one pointed tax.	4 & 5 one pointed tax.	5 & 6 one pointed tax.	4 & 5 one pointed tax.	4 one pointed tax
..	..	..	6	5 & Schedule I 1st can be added.	5
5 & Notification.	6 & schedule, which can be added to.	6 & schedule, which can be added to.	7 & schedule, which can be added to.	6 & 7 and Schedule II which can be added to	6 to 8
..
7	..	..	..	..	..
..	7, 8 & 9-	7 & 8	8 & 9	8 & 9	9 & 10
8	10 & 11	9 & 10	10 & 11	10 & 11	12

and, in fact, word for word adaptations of the Madras Act.

Act is an adaptation of the Madras Act as it was before amendment in 1947.

APPENDIX

Comparative Table of important

Sl. No.	POINT.	Madras Act Section.	Travancore Bill Section.	Mysore Act Section.	Cochin Act Section.	U.P. Act Section.
9	Powers of authorities ..	14	17	18	26 & 35 Income-tax papers also available	13
10	Confidentiality	Rule 30 Gen. Sales Tax Rules.	Rules	24	34	23
11	Accounts	13	16	17	21	12
12	Payment and recovery of tax.	10	13	13	22	8
13	High Court reference ..	.		16	24	11
14	Appeal	11	14	14	15 to 17	9
15	Revision	12	15	15	18	10
16	Offences	15	19	20	31 & 32	14
17	Composition	16	20	21	33	15
18	Escapement Reassessment and Rectification.	17 & 18 Gen. Sales Tax Rules	Rules	Rules	37	21 & 22
19	Immunity of assessments against challenge in Courts.	16A in Criminal Court only	2 immunity in Criminal Court.	22 immunity in Civil Court.	36 in Civil Court.	17
20	Indemnity for acts in good faith and Limitation.	17 & 18	22 & 23	22	37	16

IV—(contd.)

sections of Sales Tax Acts in India—contd.

E. Punjab Act Section.	W. Benga ¹ Act Section	Bihar Act Section.	Bombay Act Section.	Centra ¹ Provinces Act Section.	Orissa Act Section.
13	14	14	15	15	16
Rules	25	25	28	27	28
12	13	13	14	14	15
9 & 14	10	11	12	12	13
.	21	21	23 & 4 Tribunal also constituted.	23	24
10	20	20	21	22	23
11	20	20	22	22	23
15	22	22	24 & 25	24	25
16	23	23	26	25	26
Rules	Rules	Rules	Rules	Rules	Rules
..	19 in Civil Courts.	19 in Civil Courts.	20 in Civil Courts.	21 in Civil Courts.	22 in any Court.
17 & 18	24	24	27	26	27

APPENDIX V

Comparative Table of Rules under the Madras General Sales Tax Act and Rules under the Mysore Sales Tax Act

N.B.—The Rules under the Mysore Act closely follow the Rules under the Madras Act.

List of Abbreviations used—

T.R.—Madras General Sales Tax Turnover and Assessment Rules.

G.S.T.R.—Madras General Sales Tax Rules.

M.S.R.—Rule attached as Schedule to the Mysore Sales Tax Act.

M.R.—Mysore Sales Tax Rules.

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Page.	Line.	For	Substitute.
v	22	The income..follows.	Delete or take to space after line 30.
xiv	15	Legislature	Legislative
xxii	33	Multiplicated	Multipointed
xxiii	14	At	Of
	34	That Act	That act
xxv	14	But	Similarly
xxxvii	23.	[G.S.T.R. 5 2 (a)]	[G.S.T.R. 5 (2) (a)]
	27	[G.S.T.R. 5 2 (b)]	[G.S.T.R. 5 (2) (b)]
xxxviii	31	Its	Their
	32	Return.	Returns.
xlili	9	Dealers and licensees	Delete as repetition
liv	4	A	An
lv	17	By Appellate	By the Appellate.
17	28	No Notification	Notification
37	25	The reference to	The reference is to
	4 in F. N. 2.	1937	1939
	7 in F.N. 5 in Col. II.	Properly	Property
63	16	Sale to	Sale of
65	2	Exemption	Exemptions
67	F.N. 4 headline.		(Insert) Cotton Yarn produced by Mills in this province.
72	15	Part V (d)	Delete
	26	2 (b)	2 (a)
83	Page.	Heading	Summary
84	6	Agent	Agent
85	Page.	Heading	Difficulties

Errata and Corrigenda—(contd.)

Page.	Line.	For	Substitute.
87	Page	Heading	Fictitious Agents.
	1	possession.	possession, fix.
	F.N. 3 A.	1948(e) M.L.J.	1948 (2) M.L.J.
89	Page	Heading	Collection of Tax
93	Page	Heading	Registration
94	2 & 3	Registrations.	Registration
99	2	Have	are
102	4	or	nor
114	11	means	mean
128	30	also to be	also be
128	10	numbers	number
138	25	right.	rights
139	6	directed	distinct
144	F.N. 6 A.	1948 (2) M.L.J. of 93	1948 (2) M.L.J. 93
147	6	Penal Offences	Penal Code Offences
	20	16A	Delete
	43	Provincial	provisional
148	16	and of	and
151	6	unjured	injured
161	3 & 4 in F.N. 3.	The Hindu.... 1948	1948 M.W.N. 816
165	4 of Col. II of F.N. 10.	(8)	(78)
166	5 of F.N. 18.	Professional	Professional Tax
	15 of F.N. 20.	On	No
169	9	lie but	lie. But
	3 of F.N. 42	538	539
172	1 of F.N. 53.	27	270
173	3	56	66

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Page.	Line.	For	Substitute.
176	3	transactional	transitional
182	13	Sale	Sale
182	9 of Col. II of Foot- Note I.	Non-handspun	Non-handspun yarn
193	52	Buyer	Buyer *
205	31 & 37	District Collector	Deputy Commissioner of Commercial Taxes
205	Top page.	Heading	Delete
218	20	Mistake, meaning of	Delete 'or take to space after line 26
240	13-15	Though....territories	Delete
241	21	repeated	repealed
242	7	Dy. Commissioner	Dy. Commissioner at Bezwada
246	35 (Line 5 from bottom).	consumer is	consumers are
246	38 & 39 (Last two lines).	Perhaps....Revenue.	Delete
266	29	On	Only
	38 (3rd line from bottom).	repairs of	repairs and

D

The heading to Section 5 in page 49 to be.

Exemptions and Reductions of Tax in certain cases.

The heading to Section 6 in page 50 to be.

Power of Government to notify Exemptions and Reductions of Tax

The heading to Section 6-A in page 50 to be.

Liability to Tax of Persons not observing conditions of Licence

Page 69, lines 5 to 8 to be as below.

Licence.—(See G.S.T.R. 5 to 8 and “Licensing” under “Analytical Study of the ‘Taxation Law’”. A free licence is grantable to a dealer in handspun yarn cloth. From 1st April 1948, a dealer in non-handspun yarn cloth has to pay necessary licence fees.

Page 99, Section heading to be.

PROCEDURE TO BE FOLLOWED BY ASSESSING AUTHORITY

Page 100, Section heading to be.

Procedure to be followed by Assessing Authority

Page 124, Section heading to be.

Accounts to be maintained by Dealers

Page 129, Section heading to be.

Powers to order Production of Accounts and Powers of Entry and Inspection

Page 65.

Cotton

Page 66.

NON-HANDSPUN COTTON YARN (PRESENT LAW)

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